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प्राधिकार से प्रकाशित
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सं. 42] नई दिल्ली, अक्टूबर 16—अक्टूबर 22, 2022, शनिवार/ आश्विन 24—आश्विन 30, 1944
No. 42] NEW DELHI, OCTOBER 16—OCTOBER 22, 2022, SATURDAY/ASVINA 24—ASVINA 30, 1944

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कोयला मंत्रालय

नई दिल्ली, 18 अक्टूबर, 2022

का.आ. 995.—केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20), (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 7 की उपधारा (1) के अधीन जारी भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्या का.आ. 2908(अ), तारीख 27 जून, 2022 द्वारा जो भारत के राजपत्र, असाधारण, भाग II, खंड 3, उपखंड (ii), तारीख 27 जून, 2022 में प्रकाशित की गई थी, उक्त अधिसूचना से उपाबद्ध अनुसूची में विनिर्दिष्ट परिक्षेत्र में 64.581 हेक्टर (लगभग) या 159.579 एकड़ (लगभग) माप वाली भूमि में और ऐसी भूमि या उस पर के सभी अधिकारों के अर्जन करने के अपने आशय की सूचना दी थी;

और, सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 8 के अनुसरण में केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और, केन्द्रीय सरकार का, पूर्वोक्त रिपोर्ट पर विचार करने के पश्चात और ओडिशा सरकार से परामर्श करने के पश्चात, यह समाधान हो गया है कि इससे उपाबद्ध अनुसूची में यथा वर्णित 64.581 हेक्टर (लगभग) या 159.579 एकड़ (लगभग) माप वाली भूमि और ऐसी भूमि में या उस पर के सभी अधिकार अर्जित किए जाने चाहिए;

अतः, अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की धारा 9 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि, अनुसूची में वर्णित 64.581 हेक्टर (लगभग) या 159.579 एकड़ (लगभग) माप वाली भूमि में या उस पर के सभी अधिकार अर्जित किए जाते हैं।

इस अधिसूचना के अधीन आने वाले क्षेत्र के रेखांक संख्या एमसीएल/एसए/ एसबीओसीपी/यूए-ईएक्सटीएन./9(1)/2022/22, तारीख 21 जुलाई, 2022 का निरीक्षण कलेक्टर, जिला-अंगुल, ओडिशा- 759122 के कार्यालय या कोयला नियंत्रक, कोयला नियंत्रक संस्थान, 1, काउंसिल हाउस स्ट्रीट, कोलकाता-700 001 के कार्यालय या निदेशक (कार्मिक), महानदी कोलफील्ड्स लिमिटेड, जागृति विहार, बुर्ला, जिला संबलपुर- 768020 के कार्यालय में किया जा सकता है।

अनुसूची

उत्कल - ए कोयला ब्लॉक

(जिला-अंगुल, राज्य -ओडिशा)

[रेखांक संख्या एमसीएल/एसए/ एसबीओसीपी/यूए-ईएक्सटीएन./9(1)/2022/22, तारीख 21 जुलाई, 2022]

सभी अधिकार:

सुभद्रा ओपनकास्ट परियोजना (25 मिलियन टन प्रतिवर्ष) के लिए उत्कल-ए कोयला ब्लॉक की ब्लॉक सीमा के भीतर पूर्व में अधिसूचित क्षेत्र में विस्तार भूमि के लिए प्रस्तावित क्षेत्र का भूमि विवरण।

क्रम सं.	ग्राम का नाम	कोयला ब्लॉक का नाम	ग्राम का संख्याक	थाना	तहसील	जिला	अर्जित क्षेत्र (एकड़ में)	टिप्पणी
1.	गोलागडिया	उत्कल-ए	171	निशा	छेंदीपदा	अंगुल	7.404	भाग
2.	छोटाबरेनी		172	निशा	छेंदीपदा	अंगुल	2.200	पूर्ण
3.	कौन्सीठिप		173	निशा	छेंदीपदा	अंगुल	13.375	भाग
4.	राइझरण		170	निशा	छेंदीपदा	अंगुल	15.920	भाग
5.	कंकराई		174	निशा	छेंदीपदा	अंगुल	120.680	भाग
कुल क्षेत्र :							159.579	

कुल क्षेत्र: 159.579 एकड़ (लगभग) या 64.581 हेक्टर (लगभग)

अर्जित प्लॉट संख्याक:

1. गोलागडिया:

548(भाग), 548/1316(भाग), 549(भाग), 558(भाग), 559(भाग), 560(भाग), 563(भाग), 564(भाग), 565(भाग), 575(भाग), 578(भाग), 579(भाग), 580, 581(भाग), 582(भाग), 583(भाग), 584, 585(भाग), 617(भाग), 618(भाग), 1272(भाग), 1293(भाग), 1294(भाग), 1303(भाग), 1304(भाग), 1305(भाग), 1306(भाग).

2. छोटाबरेनी:

18/320 (भाग), 18/476, 18/321/477, 18/318/478, 22(भाग).

3. कौन्सीढिया:

1597(भाग), 1598(भाग), 1600(भाग), 1601, 1602, 1603(भाग), 1604(भाग), 1605(भाग), 1606(भाग), 1607(भाग), 1608, 1609(भाग), 1610(भाग), 1611(भाग), 1612(भाग), 1613(भाग), 1680(भाग), 1681(भाग), 1682(भाग), 1683, 1685(भाग), 1687(भाग), 1719(भाग), 1720(भाग), 1721(भाग), 1722(भाग), 1723(भाग), 1724(भाग), 1725(भाग), 1726(भाग), 1727, 1728(भाग), 1729(भाग), 1731(भाग), 1766(भाग), 1767(भाग), 1768(भाग), 1769(भाग), 1770(भाग), 1827(भाग), 1828, 1829(भाग), 2063(भाग), 2064(भाग), 2065(भाग), 2066(भाग), 2072(भाग), 2072/2780(भाग), 2073(भाग), 2074(भाग), 2075(भाग), 2077(भाग), 2098(भाग), 2099(भाग), 2100(भाग), 2192(भाग), 2193(भाग), 2196(भाग), 2197(भाग), 2198(भाग), 2202(भाग), 2203(भाग), 2204(भाग), 2205, 2206(भाग), 2207(भाग), 2644(भाग), 2645(भाग), 2646, 2647(भाग), 2648(भाग), 2649(भाग), 2650(भाग), 2712(भाग), 2713(भाग), 2715, 2732.

4. राईझरण:

1828(भाग), 1830(भाग), 1855(भाग), 1857(भाग), 1862(भाग), 1863(भाग), 1867(भाग), 1875(भाग), 1928(भाग), 1928/2280, 1928/3006, 1929, 1930.

5. कंकरेई:

1870(भाग), 1870/2065(भाग), 1870/2068(भाग), 1870/2068/2550(भाग), 1870/2068/2660, 1870/2068/2661, 1870/2068/2663(भाग), 1870/2068/2692, 1870/2069, 1870/2069, 1870/2069/2376, 1870/2069/2377, 1870/2069/2378, 1870/2069/2379, 1870/2069/2380, 1870/2069/2381, 1870/2069/2635, 1870/2070, 1870/2071(भाग), 1870/2072(भाग), 1870/2073, 1870/2073/2383, 1870/2073/2409, 1870/2073/2410, 1870/2074, 1870/2075, 1870/2075/2544, 1870/2075/2718, 1870/2076(भाग), 1870/2076/2384(भाग), 1870/2076/2385(भाग), 1870/2076/2386(भाग), 1870/2076/2387(भाग), 1870/2076/2387(भाग), 1870/2076/2534, 1870/2077(भाग), 1870/2078, 1870/2078/2563, 1870/2078/2610, 1870/2079, 1870/2079/2722, 1870/2079/2744, 1870/2080(भाग), 1870/2082(भाग), 1870/2082/2664(भाग), 1870/2083, 1870/2083/2634, 1870/2084, 1870/2085, 1870/2085/2655, 1870/2086, 1870/2087, 1870/2087/2683, 1870/2088, 1870/2088/2639, 1870/2088/2657, 1870/2089(भाग), 1870/2089/2419(भाग), 1870/2089/2420(भाग), 1870/2089/2421(भाग), 1870/2091(भाग), 1870/2091/2350, 1870/2096(भाग), 1870/2116, 1870/2116/2440, 1870/2394(भाग), 1870/2411, 1870/2492, 1870/2543, 1930(भाग), 1930/2103, 1930/2103/2104, 1930/2103/2105, 1930/2103/2106, 1930/2103/2106/2241, 1930/2103/2106/2251, 1930/2103/2106/2252, 1930/2103/2106/2253, 1930/2103/2107, 1930/2104, 1930/2105/2564, 1931, 1931/2308, 1931/2473, 1931/2603, 1931/2654, 1933, 1933/2218, 1933/2219, 1933/2237, 1933/2249, 1933/2255, 1933/2312, 1933/2324, 1933/2325, 1933/2326, 1933/2327, 1933/2328, 1933/2329, 1933/2330, 1933/2331, 1934, 1935, 1936, 1936/2336, 1936/2362, 1936/2363, 1936/2374, 1936/2391, 1936/2458, 1936/2483, 1936/2484, 1936/2484/2592, 1936/2516, 1936/2527, 1936/2531, 1936/2538, 1937.

सीमा विवरण:**पैच -I- दक्षिणी साईड: क-ख-ग-घ-ङ-च-क:**

रेखा- क-ख : बिन्दु “क” ग्राम राईझरण में प्लॉट संख्या 1928 पर स्थित है। क-ख रेखा राईझरण ग्राम की सीमा पर स्थित है।

रेखा- ख-ग: रेखा राईझरण और कंकरेई की ग्राम सीमा के साथ चल रही है। रेखा क-ख राईझरण ग्राम की सीमा के प्लॉट संख्या 1928 और 1929 और कंकरेई के प्लॉट संख्या 1930 एवं प्लॉट संख्या 1938 के आरंभिक बिन्दु तक, साथ चल रही है।

रेखा- ग-घ: रेखा ग-घ ग्राम कांकरेई के प्लॉट संख्या 1938 के किनारे पर ग-घ की रेखा पर चल रही है।

रेखा- घ-ङ: रेखा घ-ङ ग्राम कांकरेई के प्लॉट संख्या 2116/2440 और 1870 के किनारे और कांकरेई और बालीचन्द्रपुर ग्राम की आम सीमा पर चल रही है।

रेखा- ङ-च: रेखा ङ-च ग्राम कांकरेई के प्लॉट संख्या 1870 से प्लॉट संख्या 2411, 2089, 2421, 2420, 2419 से प्लॉट संख्या 2550 और 2067 तक चल रही है।

रेखा- च-क: रेखा च-क ग्राम कांकरेई के प्लॉट संख्या 2067 तथा प्लॉट संख्या 2557, 2634 के साथ-साथ ग्राम रईझरन के 2280 और 1928 तक चल रही है।

पैच-II- पश्चिमी साइड: क₁ - ख₁ - ग₁ - घ₁ - क₁ :

रेखा- क₁-ख₁: बिन्दु 'क₁' गोलागड़िया ग्राम के सिंगड़ा नाला के प्लॉट संख्या 1316 पर स्थित है और बिन्दु 'ख₁' रईझरन ग्राम के प्लॉट संख्या 1875 पर स्थित है। क₁-ख₁ रेखा गोलागड़िया ग्राम के प्लॉट संख्या 1316 से प्लॉट संख्या 2205, 2204, 2065, 2064, 1682, 1681, 2712 और 2713 कौंसिदिप ग्राम और रईझरन ग्राम प्लॉट संख्या 1828, 1830, 1862, प्लॉट संख्या 1875 तक के साथ चल रही है।

रेखा-ख₁-ग₁: रेखा ख₁ - ग₁ रायझरन ग्राम के प्लॉट संख्या 1875 के ऊपर चल रही है।

रेखा- ग₁-घ₁: बिन्दु 'ग₁' रईझरन ग्राम के प्लॉट संख्या 1875 पर स्थित है और बिन्दु 'घ₁' गोलागड़िया ग्राम के सिंगड़ा नाला के प्लॉट संख्या 1316 पर स्थित है। रेखा ग₁-घ₁ रईझरन ग्राम के प्लॉट संख्या 1875, 1867, 1862, 1830, 1828 और प्लॉट संख्या 1732, 2712, 1680, 1687, 1580, 2064, 2193, 2202, 2211 कौंसिदिप ग्राम और छोटाबरेनी ग्राम के 318, 19 और 18 और प्लॉट संख्या 1306, 1293, 564, 549 से गोलागड़िया ग्राम के 1316 तक चल रही है।

रेखा-घ₁-क₁ : रेखा बिन्दु 'घ₁' से शुरू होती है जो ग्राम गोलागड़िया के सिंगड़ा नाला के प्लॉट संख्या 1316 पर स्थित है जो ग्राम गोलागड़िया के प्लॉट संख्या 1316 के बिन्दु 'क₁' पर मिलती है।

[फा. सं. 43015/01/2021-एलएण्डआईआर]

राम शिरोमणि सरोज, निदेशक

MINISTRY OF COAL

New Delhi, the 18th October, 2022

S.O. 995.—Whereas by the notification of the Government of India in the Ministry of Coal, number S.O. 2908(E), dated the 27th June, 2022, issued under sub-section (1) of section 7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 27th June, 2022, the Central Government gave notice of its intention to acquire 64.581 hectares (approximately) or 159.579 acres (approximately) lands and all rights in or over such lands specified in the Schedule appended to that notification;

And, whereas, the competent authority in pursuance of section 8 of the said Act, has made his report to the Central Government;

And, whereas, the Central Government after considering the aforesaid report and after consulting to the Government of Odisha, is satisfied that the lands measuring 64.581 hectares (approximately) or 159.579 acres (approximately) and all rights in or over such lands as described in Schedule appended hereto, should be acquired;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), the Central Government hereby declares that the land measuring 64.581 hectares (approximately) or 159.579 acres (approximately) and all rights in or over as described in the Schedule are hereby acquired.

The plan bearing number MCL/SA/SBOCP/UA-EXTN./9(1)/2022/22, dated the 21st July, 2022 of the area covered by this notification, may be inspected at the office of the Collector, District Angul, Odisha-759122 or in the Office of the Coal Controller, Coal Controller's Organization, 1, Council House Street, Kolkata-700 001 or at the office of the Director (Personnel), Mahanadi Coalfields Limited, Post Office Jagruti Vihar, Burla, District Sambalpur-768020, Odisha.

SCHEDULE

Utkal- A Coal Block

(District- Angul, State- Odisha)

[Plan bearing number MCL/SA/SBOCP/UA-EXTN./9(1)/2022/22, dated the 21st July, 2022]**All Rights:**

Land details of proposed area towards extension land to be acquired beyond earlier notified area within block boundary of Utkal-A coal block for Subhadra Open Cast Project (25 Million Tonne per year).

Sr. No.	Name of Village	Name of the coal Block	Village number	Thana	Tahasil	District	Area acquired (in acres)	Remark
1.	Golagadia	Utkal- A	171	Nisha	Chhendipada	Angul	7.404	Part
2.	Chhotabereni		172	Nisha	Chhendipada	Angul	2.200	Full
3.	Kaunsidhipa		173	Nisha	Chhendipada	Angul	13.375	Part
4.	Raijharan		170	Nisha	Chhendipada	Angul	15.920	Part
5.	Kankarei		174	Nisha	Chhendipada	Angul	120.680	Part
Total area:							159.579	

Total area : 159.579 acres (approximately) or 64.581 hectares (approximately).

Village wise Plots acquired:**1. Golagadia:**

548(P), 548/1316(P), 549(P), 558(P), 559(P), 560(P), 563(P), 564(P), 565(P), 575(P), 578(P), 579(P), 580, 581(P), 582(P), 583(P), 584, 585(P), 617(P), 618(P), 1272(P), 1293(P), 1294(P), 1303(P), 1304(P), 1305(P), 1306(P).

2. Chhotabereni:

18/320 (P), 18/476, 18/321/477, 18/318/478, 22(P).

3. Kaunsidhipa:

1597(P), 1598(P), 1600(P), 1601, 1602, 1603(P), 1604(P), 1605(P), 1606(P), 1607(P), 1608, 1609(P), 1610(P), 1611(P), 1612(P), 1613(P), 1680(P), 1681(P), 1682(P), 1683, 1685(P), 1687(P), 1719(P), 1720(P), 1721(P), 1722(P), 1723(P), 1724(P), 1725(P), 1726(P), 1727, 1728(P), 1729(P), 1731(P), 1766(P), 1767(P), 1768(P), 1769(P), 1770(P), 1827(P), 1828, 1829(P), 2063(P), 2064(P), 2065(P), 2066(P), 2072(P), 2072/2780(P), 2073(P), 2074(P), 2075(P), 2077(P), 2098(P), 2099(P), 2100(P), 2192(P), 2193(P), 2196(P), 2197(P), 2198(P), 2202(P), 2203(P), 2204(P), 2205, 2206(P), 2207(P), 2644(P), 2645(P), 2646, 2647(P), 2648(P), 2649(P), 2650(P), 2712(P), 2713(P), 2715, 2732.

4. Raijharan:

1828(P), 1830(P), 1855(P), 1857(P), 1862(P), 1863(P), 1867(P), 1875(P), 1928(P), 1928/2280, 1928/3006, 1929, 1930.

5. Kankarei:

1870(P), 1870/2065(P), 1870/2068(P), 1870/2068/2550(P), 1870/2068/2660, 1870/2068/2661, 1870/2068/2663(P) , 1870/2068/2692, 1870/2069, 1870/2069, 1870/2069/2376, 1870/2069/2377, 1870/2069/2378, 1870/2069/2379, 1870/2069/2380, 1870/2069/2381, 1870/2069/2635, 1870/2070, 1870/2071(P), 1870/2072(P), 1870/2073, 1870/2073/2383, 1870/2073/2409, 1870/2073/2410, 1870/2074, 1870/2075, 1870/2075/2544, 1870/2075/2718, 1870/2076(P), 1870/2076/2384(P), 1870/2076/2385(P), 1870/2076/2386(P), 1870/2076/2387(P), 1870/2076/2387(P), 1870/2076/2534, 1870/2077(P), 1870/2078, 1870/2078/2563, 1870/2078/2610, 1870/2079, 1870/2079/2722, 1870/2079/2744, 1870/2080(P), 1870/2082(P), 1870/2082/2664(P), 1870/2083, 1870/2083/2634, 1870/2084, 1870/2085, 1870/2085/2655, 1870/2086, 1870/2087, 1870/2087/2683, 1870/2088, 1870/2088/2639, 1870/2088/2657, 1870/2089(P), 1870/2089/2419(P), 1870/2089/2420(P), 1870/2089/2421(P), 1870/2091(P), 1870/2091/2350, 1870/2096(P), 1870/2116, 1870/2116/2440, 1870/2394(P), 1870/2411, 1870/2492, 1870/2543, 1930(P), 1930/2103, 1930/2103/2104, 1930/2103/2105, 1930/2103/2106, 1930/2103/2106/2241, 1930/2103/2106/2251, 1930/2103/2106/2252, 1930/2103/2106/2253, 1930/2103/2107, 1930/2104, 1930/2105/2564, 1931, 1931/2308, 1931/2473, 1931/2603, 1931/2654, 1933, 1933/2218, 1933/2219, 1933/2237,

1933/2249, 1933/2255, 1933/2312, 1933/2324, 1933/2325, 1933/2326, 1933/2327, 1933/2328, 1933/2329, 1933/2330, 1933/2331, 1934, 1935, 1936, 1936/2336, 1936/2362, 1936/2363, 1936/2374, 1936/2391, 1936/2458, 1936/2483, 1936/2484, 1936/2484/2592, 1936/2516, 1936/2527, 1936/2531, 1936/2538, 1937.

Boundary description:

PATCH-I-SOUTHERN SIDE: A-B-C-D-E-F-A:

LINE-A-B: Point "A" is situated over Plot number 1928 of village Raijharan. A-B line is running up to Raijharan village boundary.

LINE-B-C: B-C line is running along the village boundary of Raijharan and Kankarei. The line B-C is running along the plot numbers 1928 and 1929 of Raijharan village boundary and plot number 1930 up to start point of plot number 1938 of Kankarei village.

LINE-C-D: C-D line is running over the edge of Plot number 1938 of village Kankarei.

LINE-D-E: D-E line is running over the edge of Plot numbers 2116/2440 and 1870 of village Kankarei and the common boundary of village Kankarei and Balichandrapur.

LINE-E-F: E-F line is running from the Plot number 1870 along the plot numbers 2411, 2089, 2421, 2420, 2419 up to plot numbers 2550 and 2067 of village Kankarei and Balichandrapur.

LINE-F-A: F-A line is running from plot number 2067 and along the plot numbers 2557, 2634 of village Kankarei up to 2280 and 1928 of village Raijharan.

PATCH-II- WESTERN SIDE: A₁-B₁-C₁-D₁-A₁:

LINE-A₁-B₁: Point "A₁" is situated at plot number 1316 of Singada jora of village Golagadia and Point "B₁" is situated at plot number 1875 of village Raijharan. A₁-B₁ line is running from plot number 1316 of village Golagadia along the plot numbers 2205, 2204, 2065, 2064, 1682, 1681, 2712 and 2713 of village Kaunsidhipa and plot numbers 1828, 1830, 1862 up to plot number 1875 of village Raijharan.

LINE-B₁-C₁: B₁-C₁ line is running over the Plot number 1875 of village Raijharan.

LINE-C₁-D₁: Point "C₁" is situated at plot number 1875 of village Raijharan & point "D₁" is situated at plot number 1316 of Singada jore of village Golagadia. Line C₁-D₁ is running over the plot numbers 1875, 1867, 1862, 1830 and 1828 of village Raijharan, plot numbers 1732, 2712, 1680, 1687, 1580, 2064, 2193, 2202 and 2211 of village Kaunsidhipa, plot numbers 318, 19 and 18 of village Chhotabereni and plot numbers 1306, 1293, 564, 549 up to 1316 of village Golagadia.

LINE-D₁-A₁: The line starts from point D₁ which is situated at plot number 1316 of Singada Jore of village Golagadia meeting at point A₁ of plot number 1316 of village Golagadia.

[F. No. 43015/01/2021-LA&IR]

RAM SHIROMANI SAROJ, Director

वाणिज्य और उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 18 अक्टूबर, 2022

का.आ. 996.—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) के साथ पठित निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स मिनरल्स लैब सर्विसेज प्राइवेट लिमिटेड, चौथी मंजिल, कर्मा पेस एवेन्यू, एफ. एल गोम्स रोड, वास्को-डी-गामा, गोवा - 403802, (जिसे एतद्पश्चात् उक्त अभिकरण कहा जायेगा), को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए, वाणिज्य मंत्रालय की शासकीय राजपत्र में प्रकाशित भारत सरकार की अधिसूचना के साथ अनुसूची में निर्दिष्ट दिनांक 20 दिसम्बर, 1965 की अधिसूचना की संख्या का.आ. 3975 के तहत प्रकाशित अधिसूचना में उपाबद्ध अनुसूची में विनिर्दिष्ट समूह-1, अर्थात् लौह अयस्क, और बॉक्साइट, को निर्यात से पूर्व निम्नलिखित शर्तों के अधीन मोरमुगांव पत्तन और पंजिम पत्तन, में उक्त खनिज और अयस्क के निरीक्षण करने के लिए एक अभिकरण के रूप में मान्यता देती है, अर्थात् :

(i) यह अभिकरण, खनिज और अयस्क समूह-1 का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण की पद्धति की जाँच करने के लिये निर्यात निरीक्षण परिषद् द्वारा निमित्त नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी, और;

(ii) यह अभिकरण, इस अधिसूचना में यथा विनिर्दिष्ट अपने कार्यों का निष्पादन करने के लिए, निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद द्वारा समय-समय पर, लिखित रूप में, दिए गए निर्देशों से आबद्ध होंगी।

[फा. सं. के-16014/6/2022 - निर्यात निरीक्षण]

एम. बालाजी, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department Of Commerce)

New Delhi, the 18th October, 2022

S.O. 996.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963) read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognises M/s Minerals Lab Services Pvt. Ltd., 4th Floor, Karma Paes Avenue, F. L. Gomes Road, Vasco-da-Gama, Goa - 403802, (hereinafter referred to as the said agency), as an agency for a period of three years with effect from the date of publication of this notification in the Official Gazette, for the inspection of Minerals & Ores, Gr. I, namely – Iron Ore & Bauxite, as specified in the Schedule annexed to the notification of the Government of India in the Ministry of Commerce, published in the official Gazette *vide* number S.O.3975 dated 20th December, 1965 respectively, prior to export of the said Minerals and Ores at Mormugao Port and Panjim Port subject to the following conditions, namely: -

(i) The said agency shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to carry out the inspection specified under rule 4 of the Export of Minerals and Ores – Group I (Inspection) Rules, 1965;

(ii) The said agency, in performance of their function as specified in this notification shall be bound by such directions, as the Director (Inspection and Quality Control), Export Inspection Council may give, in writing from time to time.

[F. No. K-16014/6/2022 - Export Inspection]

M. BALAJI, Jt. Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली, 17 अक्टूबर, 2022

का.आ. 997.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई सी एल के प्रबंधन के संबद्ध नियोजको और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय आसनसोल के पंचाट (संदर्भ संख्या 15/2020) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/10/2022 को प्राप्त हुआ था।

[सं. एल-22012/118/2019-आई. आर. (सी एम.2)]

राजेन्द्र सिंह, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 17th October, 2022

S.O. 997.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. No. 15/2020**) of the **Central Government Industrial Tribunal-cum-Labour Court Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on **10/0/2022**.

[No. L-22012/118/2019 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,
ASANSOL

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer
C.G.I.T-cum-L.C., Asansol

REFERENCE NO. 15 OF 2020

PARTIES: Management of Madhujore Colliery, Kajora Area of ECL.
Vs.
Shri Vishal Tiwari.

REPRESENTATIVES:

For the Management: None.
For the Union (Workmen): Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.

INDUSTRY: Coal.

STATE: West Bengal.

DATED: 26.09.2022

AWARD

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its Order **NO. L-22012/118/2019-IR(CM-II)** dated 06.02.2020 has been pleased to refer the following dispute between the employers, that is the Management of Eastern Coalfields Limited and their workmen for adjudication by this Tribunal.

SCHEDULE

“Whether the demand of Koyala Mazdoor Congress (HMS), Asansol, for providing employment on compassionate ground as General Mazdoor to Shri Vishal Tiwari, the dependent son of Late Mohan Tiwari, the former General Mazdoor of Madhujore Colliery, Kajora Area of ECL, who expired on 27.04.2013 while in service, by the Management of Madhujore Colliery, Kajora Area of ECL, is appropriate and justified? If so, what relief Shri Vishal Tiwari, the dependent son of Late Mohan Tiwari is entitled to, and from which date? ”

1. On receiving Order No. **NO. L-22012/118/2019-IR(CM-II)** dated 06.02.2020 from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 15 of 2020** was registered on 24.02.2020 and an order to that effect was passed issuing notice to the parties through registered post, directing them to appear and submit their written statements along with the relevant documents in support of their claims and a list of witnesses. Both parties appeared before the Tribunal through their authorized representatives.
2. Mr. Rakesh Kumar, President, Koyala Mazdoor Congress, the Union, representing the workman appeared and submitted a verified application on 16/17.08.2020, disclosing that the competent authority of ECL has considered the request of Shri Vishal Tiwari and provided him with an employment as the dependent son of Late Mohan Tiwari. It is stated in the application that since the dispute between the parties has been settled, the Reference case may be closed.
3. Having considered the submission made the representative of the workman, I am of the considered view that the dispute referred to this Tribunal for adjudication has been resolved and at present there is No Dispute between the parties. Accordingly, a **No Dispute Award** be passed.

Hence,

ORDER

An Award be passed to the effect that there is **No Dispute** between the parties. The Reference case is accordingly disposed of. Let copies of the Award be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and necessary action.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 17 अक्टूबर, 2022

का.आ. 998.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय आसनसोल के पंचाट (संदर्भ संख्या 11/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/10/2022 को प्राप्त हुआ था।

[सं. एल-22012/107/2005.आई. आर. (सी एम.2)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 17th October, 2022

S.O. 998.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. No. 11/2006**) of the **Central Government Industrial Tribunal-cum-Labour Court Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on **10/0/2022**.

[No. L-22012/107/2005 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,
ASANSOL**

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer
C.G.I.T-cum-L.C., Asansol

REFERENCE NO. 11 OF 2006

PARTIES: Management of M/s. ECL, Bankola Area.
Vs.
Shri Rajesh Rabidas.

REPRESENTATIVES:

For the Management: Mr. P. K. Goswami, Learned Advocate.
For the Union (Workmen): Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.

INDUSTRY: Coal.**STATE:** West Bengal.**DATED:** 26.09.2022**AWARD**

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its Order **No. L-22012/107/2005-IR(CM-II)** dated 04.07.2006 has been pleased to refer the following dispute between the employers, that is the Management of Eastern Coalfields Limited and their workmen for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the Management of M/s. Eastern Coalfields Limited in dismissing Sh. Rajesh Rabidas, Ex-P.R. Trainee, w.e.f. 16.4.03 is legal and justified? If not, to what relief the workman is entitled to?”

1. After receipt of Order **No. L-22012/107/2005-IR(CM-II)** dated 04.07.2006 of the aforesaid Reference framed by the Ministry of Labour, Govt. of India, New Delhi for adjudication of the dispute, a **Reference case No. 11 of 2006** was registered on 11.07.2006 issuing notices to the parties under registered post, directing them to appear and file their written statements along with relevant documents and respective list of witnesses they would rely upon.

2. The Reference case is fixed up today for hearing of argument. The moot question in this Reference is whether the action of the Management of ECL in dismissing Shri Rajesh Rabidas, Ex-P.R. Trainee w.e.f. 16.04.2003 is legal and justified? If not, to what relief the workman is entitled to? Mr. Rakesh Kumar, President, Koyala Mazdoor Congress, Union submitted written statement on behalf of the workman. Evidence was adduced by Shri Rajesh

Rabidas and he was cross-examined by the Management. No evidence is adduced by the Management. It is submitted by Mr. Rakesh Kumar, President, Koyala Mazdoor Congress, Union that the dispute between the parties has been settled and the workman is not inclined to proceed further in this case.

3. Considering the submissions made by learned advocate for the Management and the workman, it appears to me that “No Dispute” exists between the parties. The case is accordingly closed and a **No Dispute Award** is passed.

Hence,

ORDER

That a No Dispute Award be passed in respect of the above Reference. Let copies of the Award be sent to the Ministry of Labour, Govt. of India, New Delhi for information and necessary action. The Reference is accordingly disposed of.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 17 अक्टूबर, 2022

का.आ. 999.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण - सह - श्रम न्यायालय आसनसोल के पंचाट (संदर्भ संख्या 68/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/10/2022 को प्राप्त हुआ था।

[सं. एल-22012/366/98-आई. आर. (सीएम-2)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 17th October, 2022

S.O. 999.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. No. 68/1999**) of the **Central Government Industrial Tribunal-cum-Labour Court Asansol** as shown in the Annexure, in the industrial dispute between the Management of **E.C.L.** and their workmen, received by the Central Government on 17/10/2022.

[No. L-22012/366/98 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer
C.G.I.T-cum-L.C., Asansol

REFERENCE NO. 68 OF 1999

PARTIES: Management of North Searsole Colliery of M/s. ECL

Vs.

Fatik Bouri

(Represented by the legal heirs)

REPRESENTATIVES:

For the Management: Mr. P. K. Das, Learned Advocate.

For the Union/Workmen: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.

INDUSTRY: Coal.

STATE: West Bengal.

DATED: 30.09.2022

AWARD

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour, vide its Order No.

L-22012/366/98/IR(CM-II) dated 09.07.1999 has been pleased to refer the following dispute between the employers, the Management of Satgram Area of Eastern Coalfields Limited and their workmen for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the Management of North Searsole Colliery, Distt. Burdwan, ECL in dismissing Sh. Farik Bouri is legal and justified? If not, to what relief is the workman concerned entitled? ”

1. After receiving Order No. **L-22012/366/98/IR(CM-II)** dated 09.07.1999 of the aforesaid Reference framed by the Government of India, Ministry of Labour, New Delhi for adjudication, a **Reference case No. 68 of 1999** was registered on 18.09.2001, Notices were issued to the Management of Eastern Coalfields Limited as well as the Secretary, Koyala Mazdoor Congress, Union, representing the workman, directing them to appear and file their written statements along with relevant documents and list of witnesses in support of their respective claims
2. Written statement was filed on behalf of the workman on 05.02.2002 and their rejoinder on 29.10.2002. Management filed their written statement on 25.09.2002. During pendency of the Reference case Fatik Bouri, the dismissed workman expired on 17.12.2002. The legal heirs of Fatik Bouri namely, Smt. Jyotsna Bouri his wife, Bhola Bouri and Bajrang Bouri, two sons, and Smt. Mandira Bouri a married daughter were substituted in place of the deceased workman by Order dated 05.10.2016. Smt. Jyotsna Bouri filed her Affidavit-in-chief on 15.03.2017 and was represented by the union. She was cross-examined on behalf of Management of ECL and discharged. The other legal heirs of the deceased employee who filed their No objections by way of affidavits were not cross-examined on behalf of the Management.
3. An array of documents produced on behalf of the workman are as follows:
 - (i) Xerox copy of the Treatment papers of Fatik Bouri (marked as Ext.WE-I in two sheets).
 - (ii) Xerox copy of the Discharge ticket of Fatik Bouri issued from Kunustoria Area Hospital, ECL (marked as Ext.WE-II).
 - (iii) Xerox copy of the Certificate issued by T.B. Hospital, Searsole, ECL (Ext.WE-III)
 - (iv) Xerox copy of the Identity Card of the workman (Ext.WE-IV).
 - (v) Xerox copy of the Failure of Conciliation Report (FOC) issued by Assistant Labour Commissioner (Central), Asansol-II dated 21/23.09.1998 (Ext.WE-V).
 - (vi) Xerox copy of the Circular dated 12.05.1994 issued by Director (P&IR), ECL regarding supply of Enquiry Report to Charge-sheeted employee and Minutes of meeting of JCC held on 23.11.1994 (Ext.WE-VI).
 - (vii) Xerox copy of the purported Medical Prescriptions and documents (produced as Ext.WE-VII, Ext.WE-VIII, and Ext.WE-X).
4. Management did not examine any witness, though opportunity was given to them. On behalf of Management of Searsole Colliery, Eastern Coalfields Limited some documents have been produced from their custody as follows:
 - (i) Xerox copy of the Charge Sheet Ref. No. ECL/NS-P&IR/5361 dated 08.01.1992 issued to Fatik Bouri on his alleged unauthorized absence from 19.03.1990 and constituting a charge under section 17 (i) (n) of the Model Standing Order applicable to the Coal Mining Industry (marked as exhibit ME-I)
 - (ii) Xerox copy of the letter dated 28/30.03.1992 issued by the General Manager, Kunustoria Area, ECL communicating the Order of dismissal (marked as exhibit ME-II).
 - (iii) Xerox copy of the Enquiry Report in respect of charges framed against Fatik Bouri submitted by the Enquiry Officer dated 18.03.1992 (marked as exhibit ME-III)
 - (iv) Xerox copy of the statements of witnesses Shri Ashok Chakraborty, Time Keeper, Shri B. M. Singh, Leave Clerk, and Shri Sanaton Mondal, Sick Leave Clerk, who were examined in course of the Disciplinary proceeding (marked as exhibit ME-IV collectively).
5. A brief profile of this case is that the Management of North Searsole Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited initiated a Disciplinary enquiry proceeding against its workman Fatik Bouri, a Driller at North Searsole Colliery of ECL for his unauthorized absence from duty from 19.03.1990 to 08.01.1992 without any prior permission or sanction. Management issued Charge Sheet bearing Ref. No. ECL/NS-P&IR/5361 dated 08.01.1992 for violation of Clause 17 (i) (n) of the Model Standing Order applicable to the establishment. Copy of the Charge Sheet was duly forwarded to the workman under registered post but he did not accept the same nor did he participate in the Departmental enquiry held by an independent Enquiry Officer. Notice of the enquiry was also published in the daily Hindi Newspaper for due communication to the workman. The delinquent workman did not appear before the Enquiry Officer to defend his case. The enquiry proceeding was carried out following the principles of natural justice and the Enquiry Officer submitted its findings before the Appointing Authority, concluding that the charge of misconduct was established against Fatik Bouri. After careful considerations of the Charge Sheet, report of the Enquiry Officer and other connected documents Fatik Bouri was dismissed from service.

6. After receiving notice, the workman filed his written statement through the representative of Koyala Mazdoor Congress, a recognized workers' union. It is stated therein that Fatik Bouri was a permanent employee of North Searsole Colliery under ECL having U.M. No. 427616, CMPF No. 2/251/B/401. It is stated that Fatik Bouri was under medical treatment for a considerable period at T.B. Hospital at Searsole under Kunustoria Area of ECL. He was under medical treatment since 1990 and was admitted in the hospital of Eastern Coalfields Limited on 20.02.1992 and declared medically fit on 04.07.1992. It is urged that the Management issued Charge Sheet to Fatik Bouri and dismissed him from service on 31.03.1992 when he was undergoing treatment at Company's Hospital. The workman could not reply to the charges and was not given the opportunity to defend his case, thereby natural justice was denied by the Management. Even documents relating to the enquiry proceeding were not supplied to Fatik Bouri but an Order of grave punishment of dismissal was passed against him without issuing a second Show cause notice contrary to the observation of the Hon'ble Supreme Court in the case of Union of India and Others Vs. Md. Ramzan Khan.

7. It is contended on behalf of the workman that the punishment of dismissal is harsh and the procedure adopted by Management to award such punishment is illegal and disproportionate to the nature of offence. In the written statement the workman prayed for his re-instatement and full back wages with other consequential benefits.

8. In response the Management of Eastern Coalfields Limited in their written statement filed on 25.09.2002 has denied that at that relevant time Fatik Bouri was suffering from illness or he was under medical treatment at T.B. Hospital, Searsole under Kunustoria Area of ECL. The Management denied having any knowledge regarding ailment of the workman and insisted that due to long unauthorized absent of the workman, amounting to misconduct, he was rightly found guilty in the Departmental proceeding and the order of his dismissal was based upon the findings of the Enquiry Officer. According to the Management it is urged that the dismissal of the workman is justified and he is not entitled to any relief as he prayed for.

9. I have carefully traversed the Reference framed for adjudication and the attending facts and circumstances of this case along with the contents of the written statement filed on behalf of the workman and Management. Admittedly Fatik Bouri was a permanent employee under the Eastern Coalfields Limited, posted as Driller at North Searsole Colliery, ECL. It is also undisputed that the workman had remained absent from his duty from 19.03.1990 mentioned in the Charge Sheet dated 08.01.1992 (Ext.ME-I). It appears from the Affidavit-in-chief filed by Smt. Jyotsna Bouri, that Fatik Bouri, her husband died on 17.12.2002 leaving behind his widow, two sons namely Bhola Bouri and Bajrang Bouri and Smt. Mandira Bouri, a married daughter.

10. Mr. Rakesh Kumar, President, Koyala Mazdoor Congress, Union, representing the dependents of the deceased employee argued that Fatik Bouri was suffering from Pulmonary Tuberculosis and he was admitted at Kunustoria Area Hospital, Bansra under ECL. A discharge certificate issued by Medical Superintendent dated 15.02.1992 has been produced as exhibit WE-II. The union representative also places some xerox copies of outdoor patient tickets of Fatik Bouri dated 20.02.1992, 05.03.1992, 20.03.1992, 03.04.1992, 17.04.1992, 04.05.1992, 18.05.1992, 16.06.1992, and 03.07.1992 issued by the Medical Officer of ECL Hospital at Searsole which are marked as Ext. WE-I. These documents have not been verified nor denied by the Management in course of cross-examination of Smt. Jyotsna Bouri, Workman Witness-1 (WW-1). Mr. Rakesh Kumar argued on behalf of the legal heirs of the workman that the Departmental proceeding was carried out in an illegal manner without service of notice upon the workman. It is contended that reasonable opportunity was not given to Fatik Bouri even before his dismissal by the Disciplinary Authority which is contrary to the legal principle. Mr. Rakesh Kumar further submitted that the dismissal of the workman was in violation of Principle of natural justice as such the Order of dismissal is liable to be set-aside. The other legal heirs of the deceased have filed a "No Objection" by a way of affidavit in favour of Smt. Jyotsna Bouri therefore, necessary order may be passed allowing full back wages to the widow of the deceased and other consequential reliefs.

11. Mr. P. K. Das, learned advocate for the Management argued that the claims raised on behalf of the legal heirs of the ex-employee is not justified. It is asserted that Fatik Bouri was a habitual absentee who was absent from his duty for a long time from 19.03.1990 to 14.03.1992 without any information. A Disciplinary enquiry was started against him under clause 17 (i) (n) of the Model Standing Order applicable to the Coal Mining Industry. Notice was sent under registered post and also published in Hindi Newspaper, asking the delinquent employee to Show cause in respect of the charge levelled against him but he did not participate. The Enquiry proceeding was taken up ex-parte. Four witnesses were examined and the Enquiry Officer found the workman guilty of misconduct and placed his findings before the competent Authority for appropriate action. Referring to Exhibit ME-II, the Order of dismissal, it is submitted that the General Manager, Kunustoria Area, ECL by his letter dated 28/30.03.1992 dismissed Fatik Bouri with immediate effect. It is however admitted by Mr. P. K. Das, learned advocate that there is no document to show that the notice of Charge Sheet was served upon the workman before commencement of the enquiry proceeding. Learned advocate for the Management also conceded that relevant documents relating to the Departmental enquiry were not supplied to the charged workman nor any Second Show cause notice was served upon him before imposing the penalty.

12. It is a well established fact and also laid down by the Hon'ble High Court of Madhya Pradesh in the case of **M.P. Road Transport Corporation and Another Vs. Rajendra Tiwari; 2020 LLR 134** that " (6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the

validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo moto the employer to adduce evidence before it to justify the action taken by it.”

13. In the present case under Reference the ECL Management was given the opportunity to adduce evidence but they relied only on some documents related to Domestic enquiry. They did not seek any opportunity to adduce further evidence. Therefore, the dispute under reference is taken up as a whole for adjudication.

14. Having considered the arguments advanced on behalf of the respective parties on the backdrop of the facts and circumstances of the case, it appears to me that the Departmental enquiry commenced without service of Show cause notice upon the charged workman. The Enquiry Report submitted by Mr N. N. Chakraborty dated 18.03.1992, produced by the Management as Ext.ME-III reveals that the fact relating service of notice through post or publication in any Hindi Newspaper were not referred specifically in his Report by way of their identification of the service return of Notice or by production of the copy of Newspaper. It is strange to find from Ext.ME-I, the Charge Sheet dated 08.01.1992 that Fatik Bouri was charged for his absence from duty from 19.03.1990 but in the Enquiry Report dated 18.03.1992, marked as Ext.ME-III, the date of unauthorized absence has been mentioned as 19.08.1990. This incongruity in the charge and the Enquiry Report is self-defecting and remained un-explained.

15. In the case of **Union of India and Others Vs. Md. Ramzan Khan, 1999 (61) FLR, 376**, the Hon'ble Supreme Court held that “When the Enquiry Officer is not the Disciplinary Authority, the delinquent employee has a right to receive the Enquiry Officer's report before the Disciplinary Authority arrives at its conclusion with regard to the charges levelled against him. A denial of the Enquiry Officer's report before the Disciplinary Authority takes its decision on the charges, is denial of opportunity to the employee to prove his innocence and is a breach of Principle of natural justice”. Before passing an Order of termination it is therefore mandatory to issue a Second Show cause notice to the employee in order to provide an opportunity to the workman to plead for either no penalty or lesser penalty.

16. In my considered view the non-supply of copies of documents and list of witnesses to the workman before enquiry proceeding and non-issuance of the Second Show cause notice before dismissal from service, depriving him of his right to prove his innocence and produce his documents, amounts to violation of the principle of natural justice. Such extenuating circumstance constrains me to hold that the action taken by the Management in dismissing Fatik Bouri is harsh, disproportionate, arbitrary, illegal and unjust, as such liable to be set-aside. Accordingly, the order of dismissal of Fatik Bouri passed by the General Manager, Kunustoria Area of Eastern Coalfields Limited in his letter dated 28/30.03.1992 is set-aside. The workman Fatik Bouri having expired on 17.12.2002, there is no scope for re-instatement of the employee. However, Smt. Jyotsna Bouri, widow of Fatik Bouri shall be entitled to back wages of the workman, Fatik Bouri from the date of his dismissal from service till his death, on proper verification of her identity. She shall further be entitled to consequential benefits of monetary compensation from the date of death till the date of his notional superannuation, had the workman been alive. The Management of Kunustoria Area of Eastern Coalfields Limited is directed to give effect to this Award within three months from the date of publication of Notification under section 17 of the Industrial Dispute Act, 1947.

Hence,

ORDER

Let an Award be passed as per the above findings. Copies of the Award be sent to the Ministry of Labour, Govt. of India, New Delhi for information and necessary action. The Reference is accordingly disposed of.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 18 अक्टूबर, 2022

का.आ. 1000.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कार्यपालक अभियंता, दूरसंचार सिविल प्रभाग, भोपाल (म.प्र.) के प्रबंधन के संबद्ध नियोजकों और श्री बद्रीलाल लोवांशी, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट(संदर्भ संख्या CGIT/LC/R/180/99) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 17/10/2022 को प्राप्त हुआ था।

[सं. एल- 40012/95/98- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 18th October, 2022

S.O. 1000.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/180/99) of the **Central Government Industrial Tribunal cum Labour–Jabalpur**, as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Executive Engineer, Telecom Civil Division, Bhopal (M.P.) and Shri Badrilal Lowanshi, Worker**, which was received along with soft copy of the award by the Central Government on 17/10/2022.

[No. L- 40012/95/98- IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR
NO. CGIT/LC/R/180/99

Present: P.K.Srivastava, H.J.S..(Retd)

Shri Badrilal Lowanshi
S/o Dhuri Lal Lowanshi,
C/o Amritlal, 1/14,
P&T Colony, Bhadbhadharoad,
Bhopal (M.P.)

... Workman

Versus

The Executive Engineer,
Telecom Civil Division,
GTB Complex,
3rd Floor,
Bhopal(M.P.)462003

... Management

AWARD
(Passed on 29-9-2022.)

As per letter dated 26/4/99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/95/98/1RDU. The dispute under reference relates to:

“Whether the action of the management of Executie Engineer, Telecom Civil division in terminating Shri Badrilal Lowanshi S/o shri Dhurilal is legal and ustified?If not, to what relief the workman is entitled .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their statement of claim/defense.
2. The case of the workman as stated in his statement of claim is that he was appointed as a peon after all formalities conducted by the management and joined as a peon on 10-8-1993. He continued in service till 1-7-1997 when he was terminated from service without any management notice or compensation. He has continuously worked with the management for more than 240 days in every year , hence his termination is against Section 25F of the Industrial Disputes Act,1947. Accordingly the workman has prayed that setting aside his termination, he be reinstated with all back wages and benefits.
3. The case of management is mainly that the workman was never appointed by Management as claimed by him. He never worked continuously for 240 days or more in any year till the date of his termination, hence there is no question of his termination. Accordingly the Management has prayed that the reference be answered against the workman.
4. The workman has filed his rejoinder wherein he has mainly reiterated his claim.
5. Perusal of record also reveals that the workman had filed an application seeking directions to management to file documents mentioned in the application. The Management took the stand that these documents were not available with them.
6. In evidence the workman filed his affidavit as his examination in chief. He has been cross-examined by the management. In his cross-examination, he has proved certain voucher(photocopy) Exhibit W1 to W-11.
7. The management has filed affidavit of its witness but none turned up for cross-examination, hence their affidavit cannot be read in evidence in support of case of management.
8. None was present at the time of argument. I have gone through the record as well.

9. Following issues come up for determination, from perusal of the record:-

- (1) Whether the workman has successfully proved his engagement for 240 days, in the year preceding the date of his termination?
- (2) Whether the termination of workman is against law?
- (3) Relief to which the workman is entitled to?

10. ISSUE NO.1:-

The workman has stated in his affidavit that he has continuously worked from the date of his first appointment i.e. 10-8-1993 till the date of his termination i.e. 1-9-1997 and has worked 240 days continuously in every year including the year preceding the date of his termination. He has filed and proved certain voucher which are of the period between 1993 and 1994 Which corroborate his case that he was at least paid by the Management for working as Beldar in different periods as mentioned in these vouchers. None of these vouchers are of the period since 1995 till date of his termination in 1997. ON the other hand, there is affidavit of Management witness on which no opportunity of cross-examination has been given to workman because the management witness never appeared for cross-examination. Hence there is no occasion to dis-believe the statement of the workman on oath. Accordingly, it is held that the workman has successfully proved his continuous engagement with the Management as casual labour for a period of 240 days and more in every year including the year preceding the date of this termination. **Issue No.1 is answered accordingly.**

11. ISSUE NO.2:-

Since it is established that no notice or compensation was given to the workman, his termination is held in violation of Section 25F of the Industrial Disputes Act, 1947. **Issue No.2 is answered accordingly.**

12. ISSUE NO.3:-

The workman was a daily wager. He was not appointed against any sanctioned vacancy hence his reinstatement is not a proper relief to him. Keeping in view all the facts and circumstances of the case, a lump sum amount of Rs.40,000/- (Rupees forth thousand only) will be paid by the Management to the workman, within 30 days from the date of publication of Award in the Official Gazette failing which interest at the rate of 6%p.a. **Accordingly Issue No.3 is answered in favour of the workman.**

13. On the basis of the above discussion, following award is passed:-

A.The action of the management of Executive Engineer, Telecom Civil Division in terminating Shri Badrilal Lowanshi S/o Shri Dhurilal is held to be unjustified.

B.The workman is held entitled to a lump sum amount of Rs.40,000/-(Rupees forth thousand only) within 30 days from the date of publication of Award in the Official Gazette failing which interest at the rate of 6% p.a.

14. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 29-9-2022

नई दिल्ली, 18 अक्टूबर, 2022

का.आ. 1001.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रबंध निदेशक, भारतीय राष्ट्रीय उपभोक्ता सहकारी संघ, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और श्री कांत प्रकाश सिंह, श्री जितेंद्र कुमार, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट (संदर्भ संख्या CGIT/LC/R/7/2020) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 17/10/2022 को प्राप्त हुआ था।

[सं. एल- 42012/46/2019- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 18th October, 2022

S.O. 1001.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/7/2020) of the **Central Government Industrial Tribunal cum Labour–Jabalpur**, as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Managing Director, Indian National Consumer Cooperative Association, New Delhi and Shri Kant Prakash Singh; Shri Jitendra Kumar, Worker**, which was received along with soft copy of the award by the Central Government on 17/10/2022.

[No. L- 42012/46/2019- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/7/2020

Present: P.K.Srivastava, H.J.S..(Retd)

Shri Kant Prakash Singh

G-47, New Shabri Nagar,

Sukhliya, Indore (M.P.)

Shri Jitendra Kumar ,

LIG Duplex, Nand Nagar,

Near to Church

Indore(M.P.)

...Workman

Versus

The Managing Director

Indian National Consumer Cooperative Association

3.siri Institutional Area

Selgav Marg, New Delhi.

...Management

AWARD

(Passed on 29-9-2022)

As per letter dated 16/1/2020 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-42012/46/2019-IR(DU). The dispute under reference relates to:

“Kya Neyojak Thekedar, Bharitya Rashtriya Upphokta Sehkari Sangh(NCF) dwara Avedakon (Karmkaron)Shri Jitendra Kumar Evem shri Kant Prakash singh ko “B shreni” ke sanshodhit yatayat Bhatta Ke dar se Yatayat Bhatee ka bhugtan na kiya jaana uchhit (jabke Anya B-Shreni ke Shehar ke Karmkaron ko diya gaya hai) yadi nahi haan to kab se weh ukt badhe bhatte yatayat ko paane ke adhikari hai? .”

1. After registering the case on the basis of reference, notices were sent to the parties and were served on them. The workman never appeared nor file any statement of claim. The Management also did not appear and nor did they file any written statement of defence, inspite of several opportunity being given.

2. Since the initial burden to prove the claim is on the workman, in which he has miserably failed, the reference deserves to be answered against the workman, holding the claim of the workman not prove and is answered accordingly.

A.The action of the management as mentioned in the reference is held to be just and proper.

B.The workman is held entitled to no relief.

3. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 29-9-2022

नई दिल्ली, 18 अक्टूबर, 2022

का.आ. 1002.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कारखाना प्रबंधक, न्यू भोपाल टेक्सटाइल मिल्स, भोपाल (म.प्र.) के प्रबंधन के संबद्ध नियोजकों और श्री मनोज कुमार पंथी, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट (संदर्भ संख्या CGIT/LC/R/76/2014) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 21/09/2022 को प्राप्त हुआ था।

[सं. एल- 42012/109/2014- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 18th October, 2022

S.O. 1002.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/76/2014) of the Central Government Industrial Tribunal cum Labour-Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Factory Manager, New Bhopal Textile Mills, Bhopal (M.P.) and Shri Manoj Kumar Panthi, Worker, which was received along with soft copy of the award by the Central Government on 21/09/2022.

[No. L- 42012/109/2014- IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/76/2014

Present: P.K.Srivastava, H.J.S..(Retd)

Shri Manoj Kumar Panthi,

H.No.22, Opp.Bal vihar,

Chandbarh,

Bhopal(M.P.)

... Workman

Versus

The Factory Manager

New Bhopal Textile Mills,

Near Railway Station,Chandbarh,

Bhopal(M.P.)-462010

... Management

AWARD

(Passed on 28-7-22.)

As per letter dated 30-9-2014 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No.L-42012/109/2014-IR(DU). The dispute under reference relates to:

“Whether the action of the management of New Bhopal Textile Mills in terminating the services of Shri Manoj Kumar Panthi w.e.f. 11-4-2013 is justified? If not, to what relief the workman is entitled for? .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defence.
2. The case of the workman as stated in his statement of claim is that he was appointed in the production department as co-winder on 8-9-2007 Job Card No.5427. His wages were Rs.6690/- per month. His services were terminated by Management from 11-4-2013. Services of his co-workman Vinod Kumar Pawar, Manoj Lodhi and Jaiveer Singh were also terminated by Management on the same date but they were taken back in employment. It is the case of the workman that before termination, no inquiry or charge sheet was issued against him. He was not given any opportunity of hearing. He was not given any notice or compensation whereas he had already completed more than 240 days in employment in every year, including the year preceding the date of his termination.
3. His Termination is unfair labour practice adopted by Management. It is also in violation of Section 25N of the Industrial Disputes Act, 1947(hereinafter referred to as the word ‘Act’.) because no prior approval of Competent Authority was obtained before termination. It is also in violation of Section 25H of the Industrial Disputes Act. Accordingly, the workman has prayed that setting aside the termination, he be reinstated with back wages and consequential benefits.
4. The case of Management as taken in their written statement of defence is that on 11-4-2013 the workman organizes a programme along with workers Manoj Lodhi, Vinod Pawar and Jayveer Singh without prior approval of the Management in the factory campus. The Management has further stated that the applicant workman and co-workman had submitted a joint explanation on 12-4-2013 which was found not satisfactory. Further some daily wagers including the applicant workman assembled with some outsiders on the main gate of the factory and burnt the orders of Management. The Union of the applicant workman is not registered. They further observed a strike on 22-4-2013, resulting into disruption of production. Furthermore, they organized a Budhi-Shudhi Yagya on the main gate of the Factory on 24-4-2013 and 26-4-2013. They further burnt an effigy of Management on the Main gate on 1-5-2013. On 7-5-2013 they organized a procession against the management. Thus they disrupted the production process in the factory resulting into huge loss to the Factory. The workman were given an opportunity to tender an apology for their work, if they wanted to be reinstated. The co-workman tendered an apology. They were reinstated but the applicant workman did not tender any apology, hence he was not reinstated.
5. The Management has filed photocopy documents which are not admitted by the workman, hence, cannot be read in evidence. The workman filed rejoinder, mainly reiterating his case. The workman has filed his affidavit as his examination-in-chief in which he reiterated his case taken by him in his statement of claim and rejoinder. The Management did not appear and did not care to cross-examine the workman, hence the opportunity to cross-examine was closed. The Management did not examined any witness.
6. At the time of argument also none appeared for Management, hence argument of learned counsel for workman were heard. The Management was given opportunity to file written arguments. No written arguments was filed.
7. I have perused the record in the light of arguments.
8. **The Reference itself is the issue for determination, in the case in hand.**
9. According to the workman, he was employed with the Management and had completed 240 days of continuous service with the management. This fact is not disputed by the Management. This is also not disputed that his services were terminated by Management on 11-4-2013. The Management has taken a case that after 11-4-2013 so many acts of strike and disruption in production were committed by the applicant workman. The photocopy documents filed by Management cannot be read in their favour because they are not proved. None has appeared on behalf of the Management as witness to prove the case of the management. ON the basis of uncontroverted affidavit of workman, this fact also stands proved that the services of the workman were terminated on the basis of a charge which was organizing some function or meeting at the main gate of the Factory without permission of the Management. The Principle of natural justice require that the workman would have been given an opportunity to have his say on these allegations. Since no notice or compensation was given before termination, the action of management is held violative of the Industrial Disputes Act. On the basis of above discussion and finding, the action of Management in terminating the services of the workman w.e.f. 11-4-2013 is held to be unjustified in law.

10. On the basis of finding recorded above, the question arises as to what relief the workman is entitled? The management is an industry engaged in production. The termination of the workman has been held against law. In such a situation, keeping in view the fact that according to the Standing Orders, after completing certain years of service, the workman may be considered for regularization and other benefits. The interest of justice will be served in reinstatement of the workman but since the workman has not worked in these years and he has nowhere stated that he has been in gainful employment after his termination, he is held entitled to only 25% of back wages.

11. On the basis of the above discussion, following award is passed:-

A. The action of the management of New Bhopal Textile Mills in terminating the services of Shri Manoj Kumar Panthi w.e.f. 11-4-2013 is held to be unjustified.

B. The workman is held entitled to be reinstated with 25% of back wages payable to him within 30 days of date of publication of Award in Official Gazette, failing which interest @6% per annum from the date of publication till payment.

C. The workman is further held to be deemed to be in continuous service for all other service benefits, pre and post retiral.

D. No order as to costs.

12. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 28-7-2022

नई दिल्ली, 18 अक्टूबर, 2022

का.आ. 1003.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक दूरसंचार, बीएसएनएल, सीटीओ कंपाउंड, इंदौर (म.प्र.) के प्रबंधन के संबद्ध नियोजकों और अंचल सचिव, राष्ट्रीय दूरसंचार कर्मचारी संघ, इंदौर (म.प्र.), के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट (संदर्भ संख्या CGIT/LC/R/106/2005) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 17/10/2022 को प्राप्त हुआ था।

[सं. एल- 40012/59/2005- आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th October, 2022

S.O. 1003.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/106/2005) of the Central Government Industrial Tribunal cum Labour-Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General manager Telecom, BSNL, CTO Compound, Indore (M.P.) and The Circle Secretary, National Federation of Telecom Employees, Indore(M.P.), which was received along with soft copy of the award by the Central Government on 17/10/2022.

[No. L- 40012/59/2005- IR (DU)]

D.K.HIMANSHU, Under Secy.

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/106/2005

Present: P.K.Srivastava, H.J.S..(Retd)

The Circle Secretary,

National Federation of Telecom Employees,

41-A, Vijay Nagar, Indore(M.P.)

.... Workman

Versus

The General manager Telecom

BSNL,CTO Compound,

Old Residency Area

Indore(M.P.)

... Management

AWARD

(Passed on 27-9-2022)

As per letter dated 26/9/2005 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/59/2005-IR(DU). The dispute under reference relates to:

“Whether the action of the management of General manager Telecom, Bharat Sanchar Nigam Ltd. Indore in terminating the services of Shri Kalyan Singh S/o Shri Vijay Singh Mandloi w.e.f. 1990 is legal & justified? If not, to what relief the workman is entitled to and from which date ?”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have appeared and filed their respective statement of claim/defence.
2. Accordingly to the workman he was engaged in Telecommunication Department in District Indore in the year 1987. He was dis-engaged in the beginning of year 1990. He worked continuously for 240 days in the year preceding the date of his dis-engagement. His services were terminated by Management under the oral orders which is in violation of Section 25F of the Industrial Disputes Act 1947. A case with respect to illegal retrenchment of 159 workmen was filed by the Union in the year 1990 before Central Administrative Tribunal Bench as OA.No. 229/1990 (Manoj Kumar and Others Vs. Union of India) which was decided by the Tribunal vide its order dated 19-9-1995. It was ordered that those daily wagers who were engaged before 22-6-1988 are regularized and those daily wagers who were engaged after 22-6-1988 their termination of services were set aside. This order was never complied with. Accordingly, the workman has sought that he be held entitled to regularization setting aside his termination in the light of order of Central Administrative Tribunal. Accordingly setting aside his termination, he be reinstated with all back wages and benefits.
3. The case of workman is mainly that firstly the judgment of Central Administrative Tribunal is not applicable to the present workman because according to himself, he was engaged as a daily wager in the year 1987. Secondly he never completed 240 days in continuous engagement of the Management as claimed by him, hence his disengagement is not against law. Thirdly the dispute has been raised after considerable delay, hence is barred by delay and laches on the part of the workman. Accordingly the workman has prayed that the reference be answered against the workman.
4. In evidence, the workman has examined himself on oath and has been cross-examined. The Management has examined its witness Basant Kumar Yadav, Divisional Engineer on oath who has been cross-examined by workman. The workman has filed and proved three photocopy documents Exhibit W-1 is the receipt of Union Membership, Exhibit W-2 is the identity card and Exhibit W-3 is the personal record of the workman on the basis of muster roll. As it comes out from perusal of record that once this case was fixed for final arguments in the year 2009 by my learned Predecessor, it remained at the stage of argument till 7-5-2004, thereafter it was fixed for Award and again deputed back for evidence. Parties again filed their evidence. The workman again examined himself on evidence and was cross-examined. The Management also examined its witness Nitin Kumar Soni and he was cross-examined.
5. I have heard oral arguments of Shri Mukesh Soni, learned counsel appearing for workman and Shri R.S.Khare, learned counsel appearing for Management. I have gone through the record as well as the written arguments filed by the parties.
6. On perusal of record, the following issues comes up for determination:-

(1)Whether the workman has successfully proved his continuous engagement for 240 days or more in any year, including the year preceding the date of his dis-engagement.?

(2)Whether the action of the management in terminating the services of the workman is justified in law or not?

(3)Relief if any the workman is entitled to?

7. ISSUE NO.1:-

The burden to prove this issue is on the workman and he has corroborated his case in his affidavit filed as his Examination in chief. It is supported by Exhibit W-2 a statement regarding the working days, hence the case of the workman that he worked for more than 240 days in the year preceding the date of his termination is **held not proved**. From oral evidence and documents Exhibit W-1, it is held that the workman worked for only 226 days in the year preceding the date of his termination. **Issue No.1 is answered against the workman.**

8. ISSUE NO.2:-

IN the light of the findings recorded in Issue No.1, since it is established that he only worked for 226 days in the year preceding the date of his termination, **Issue No.2 is answered in against the workman, holding his termination justified in law.**

9. ISSUE NO.3:-

Since the workman was not employed against a regular vacancy or by following the recruitment procedure and the fact proved that he worked for less than 240 days in the year preceding the date of his termination, his reinstatement is not justified in law and he is held entitled to no relief. **Thus Issue No.3 is answered against the workman.**

10. On the basis of the above discussion, following award is passed:-

A. The action of the management of General manager Telecom, Bharat Sanchar Nigam Ltd. Indore in terminating the services of Shri Kalyan Singh S/o Shri Vijay Singh Mandloi w.e.f. 1990 is held legal and justified.

B. The workman is held entitled to no relief.

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 27-9-2022

नई दिल्ली, 18 अक्टूबर, 2022

का.आ. 1004.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **महाप्रबंधक दूरसंचार, बीएसएनएल, सीटीओ कंपाउंड, इंदौर (म.प्र.)** के प्रबंधन के संबद्ध नियोजकों और **अंचल सचिव, राष्ट्रीय दूरसंचार कर्मचारी संघ, इंदौर (म.प्र.)**, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट (संदर्भ संख्या **CGIT/LC/R/105/2005**) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 17/10/2022 को प्राप्त हुआ था।

[सं. एल- 40012/58/2005- आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 18th October, 2022

S.O. 1004.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. **CGIT/LC/R/105/2005**) of the **Central Government Industrial Tribunal cum Labour-Jabalpur**, as shown in the Annexure, in the Industrial dispute between the employers in relation to **The General manager Telecom, BSNL, CTO Compound, Indore (M.P.) and The Circle Secretary, National Federation of Telecom Employees, Indore (M.P.)**, which was received along with soft copy of the award by the Central Government on 17/10/2022.

[No. L- 40012/58/2005- IR (DU)]

D.K.HIMANSHU, Under Secy.

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/105/2005

Present: P.K.Srivastava

H.J.S..(Retd)

The Circle Secretary
 National Federation of
 Telecom Employes,
 41-A, Vijay Nagar, Indore(M.P.)

... Workman

Versus

The General Manager Telecom
 BSNL, CTO Compound,
 Old Residency Area
 Indore(M.P.)

... Management

AWARD

(Passed on 27-9-22.)

As per letter dated 26-9-2005 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/58/2005-IR(DU). The dispute under reference relates to:

“Whether the action of the management of General Manager Telecom, BSNL, Indore in terminating the services of Shri Mahesh S/o Shri Sunderlal Verma w.e.f. 1990 is legal and justified? If not, to what relief the workman is entitled to and from which date? .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have appeared and filed their respective statement of claim/defence.
2. Accordingly to the workman he was engaged in Telecommunication Department in District Indore in the year 1987. He was dis-engaged in the beginning of year 1990. He worked continuously for 240 days in the year preceding the date of his dis-engagement. His services were terminated by Management under the oral orders which is in violation of Section 25F of the Industrial Disputes Act 1947. A case with respect to illegal retrenchment of 159 workmen was filed by the Union in the year 1990 before Central Administrative Tribunal Bench as OA.No. 229/1990(Manoj Kumar and Others Vs. Union of India) which was decided by the Tribunal vide its order dated 19-9-1995. It was ordered that those daily wagers who were engaged before 22-6-1988 are regularized and those daily wagers who were engaged after 22-6-1988 their termination of services were set aside. This order was never complied with. Accordingly, the workman has sought that he be held entitled to regularization setting aside his termination in the light of order of Central Administrative Tribunal. Accordingly setting aside his termination, he be reinstated with all back wages and benefits.
3. The case of workman is mainly that firstly the judgment of Central Administrative Tribunal is not applicable to the present workman because according to himself, he was engaged as a daily wager in the year 1987. Secondly he never completed 240 days in continuous engagement of the Management as claimed by him, hence his disengagement is not against law. Thirdly the dispute has been raised after considerable delay, hence is barred by delay and laches on the part of the workman. Accordingly the workman has prayed that the reference be answered against the workman.
4. In evidence, the workman has examined himself on oath and has been cross-examined. The Management has examined its witness Basant Kumar Yadav, Divisional Engineer on oath who has been cross-examined by workman. The workman has filed and proved three photocopy documents Exhibit W-1 is the receipt of Union Membership, Exhibit W-2 is the identity card and Exhibit W-3 is the personal record of the workman on the basis of muster roll. As it comes out from perusal of record that once this case was fixed for final arguments in the year 2009 by my learned Predecessor, it remained at the stage of argument till 7-5-2004, thereafter it was fixed for Award and again deputed back for evidence. Parties again filed their evidence. The workman again examined himself on evidence and was cross-examined. The Management also examined its witness Nitin Kumar Soni and he was cross-examined.
5. I have heard oral arguments of Shri Mukesh Soni, learned counsel appearing for workman and Shri R.S.Khare, learned counsel appearing for Management. I have gone through the record as well as the written arguments filed by the parties.

6. On perusal of record, the following issues comes up for determination:-

- (1) Whether the workman has successfully proved his continuous engagement for 240 days or more in any year, including the year preceding the date of his dis-engagement.?
- (2) Whether the action of the management in terminating the services of the workman is justified in law or not?
- (3) Relief if any the workman is entitled to?

7. **ISSUE NO.1:-**

The burden to prove this issue is on the workman and he has corroborated his case in his affidavit filed as his Examination in chief. It is supported by Exhibit W-2 a statement regarding the working days, hence the case of the workman that he worked for 241 days in the year preceding the date of his termination is held proved. . On the other hand, management witness has corroborated the case of management in his statement on oath. From oral evidence and documents Exhibit W-1, it is held that the workman worked for 241 days in the year preceding the date of his termination. **Issue No.1 is answered accordingly.**

8. **ISSUE NO.2:-**

IN the light of the findings recorded in Issue No.1, since it is established that no notice or compensation was given to the workman on his termination, **Issue No.2 is answered in favour of the workman, holding his termination against law.**

9. **ISSUE NO.3:-**

Since the workman was not employed against a regular vacancy or by following the recruitment procedure, his reinstatement is not justified in law and keeping in view the tenure of his service, nature of employment, nature of work, he is held entitled to lump sum compensation of Rs.30,000/- to be paid to him within 30 days from the date of publication of Award in Official Gazette.

10. On the basis of the above discussion, following award is passed:-

A. The action of the management of General Manager Telecom, BSNL, Indore in terminating the services of Shri Mahesh S/o Shri Sunderlal Verma w.e.f. 1990 is held not legal and justified.

B. The workman is held entitled to lump sum compensation of Rs.30,000/- to be paid to him within 30 days of Date of publication of Award in Official Gazette.

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 27-9-2022

नई दिल्ली, 18 अक्टूबर, 2022

का.आ. 1005.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक दूरसंचार, बीएसएनएल, सीटीओ कंपाउंड, इंदौर (म.प्र.) के प्रबंधन के संबद्ध नियोजकों और अंचल सचिव, राष्ट्रीय दूरसंचार कर्मचारी संघ, इंदौर (म.प्र.), के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट (संदर्भ संख्या CGIT/LC/R/119/2005) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 17/10/2022 को प्राप्त हुआ था।

[सं.एल- 40012/54/2005- आईआर-(डीयू)]

डी.के.हिमांशु, अवर सचिव

New Delhi, the 18th October, 2022

S.O. 1005.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/119/2005) of the **Central Government Industrial Tribunal cum Labour-Jabalpur**, as shown in the Annexure, in the Industrial dispute between the employers in relation to **The General manager Telecom, BSNL, CTO Compound, Indore (M.P.) and The Circle Secretary, National Federation of Telecom Employees, Indore (M.P.)**, which was received along with soft copy of the award by the Central Government on 17/10/2022.

[No. L- 40012/54/2005- IR (DU)]

D.K.HIMANSHU, Under Secy.

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/119/2005

Present: P.K.Srivastava

H.J.S..(Retd)

The Circle Secretary,
 National Federation of Telecom Employees,
 41-A, Vijay Nagar
 Indore.

... Workman

Versus

The General manager Telecom
 BSNL CTO Compound,
 Old Residency Area,
 Indore(M.P.)

... Management

AWARD

(Passed on 27-9-2022.)

As per letter dated 18-10-2005 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/54/2005-IR(DU).The dispute under reference relates to:

“Whether the action of the management of General Manager, Telecom, BSNL, Indore in terminating the services of Shri Prakash S/o Shri Ram Lal Gehlot since 1989 without following the provisions of the ID Act is just and legal? If not to what relief the workman is entitled to? .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have appeared and filed their respective statement of claim/defence.
2. Accordingly to the workman he was engaged in Telecommunication Department in District Indore in the year 1987. He was dis-engaged in the beginning of year 1990. He worked continuously for 240 days in the year preceding the date of his dis-engagement. His services were terminated by Management under the oral orders which is in violation of Section 25F of the Industrial Disputes Act 1947. A case with respect to illegal retrenchment of 159 workmen was filed by the Union in the year 1990 before Central Administrative Tribunal Bench as OA.No. 229/1990(Manoj Kumar and Others Vs. Union of India) which was decided by the Tribunal vide its order dated 19-9-1995. It was ordered that those daily wagers who were engaged before 22-6-1988 are regularized and those daily wagers who were engaged after 22-6-1988 their termination of services were set aside. This order was never complied with. Accordingly, the workman has sought that he be held entitled to regularization setting aside his termination in the light of order of Central Administrative Tribunal. Accordingly setting aside his termination, he be reinstated with all back wages and benefits.
3. The case of workman is mainly that firstly the judgment of Central Administrative Tribunal is not applicable to the present workman because according to himself, he was engaged as a daily wager in the year 1987. Secondly he never completed 240 days in continuous engagement of the Management as claimed by him, hence his disengagement is not against law. Thirdly the dispute has been raised after considerable delay, hence is barred by delay and latches on the part of the workman. Accordingly the workman has prayed that the reference be answered against the workman.
4. In evidence, the workman has examined himself on oath and has been cross-examined. The Management has examined its witness Basant Kumar Yadav, Divisional Engineer on oath who has been cross-examined by workman. The workman has filed and proved three photocopy documents Exhibit W-1 is the receipt of Union Membership, Exhibit W-2 is the identity card and Exhibit W-3 is the personal record of the workman on the basis of muster roll. As it comes out from perusal of record that once this case was fixed for final arguments in the year 2009 by my learned Predecessor, it remained at the stage of argument till 7-5-2004, thereafter it was fixed for Award and again deputed back for evidence. Parties again filed their evidence. The workman again examined himself on evidence and was cross-examined. The Management also examined its witness Nitin Kumar Soni and he was cross-examined.
5. I have heard oral arguments of Shri Mukesh Soni, learned counsel appearing for workman and Shri R.S.Khare, learned counsel appearing for Management. I have gone through the record as well as the written arguments filed by the parties.
6. On perusal of record, the following issues comes up for determination:-

(1) Whether the workman has successfully proved his continuous engagement for 240 days or more in any year, including the year preceding the date of his dis-engagement.?

(2) Whether the action of the management in terminating the services of the workman is justified in law or not?

(3) Relief if any the workman is entitled to?

7. **ISSUE NO.1:-**

The burden to prove this issue is on the workman and he has corroborated his case in his affidavit filed as his Examination in chief. It is supported by Exhibit W-2 a statement regarding the working days, hence the case of the workman that he worked for 291 days in the year preceding the date of his termination is held proved. On the other hand, management witness has corroborated the case of management in his statement on oath. From oral evidence of workman and documents Exhibit W-1, it is held that the workman worked for 291 days in the year preceding the date of his termination. **Issue No.1 is answered accordingly.**

8. **ISSUE NO.2:-**

IN the light of the findings recorded in Issue No.1, since it is established that no notice or compensation was given to the workman on his termination, **Issue No.2 is answered in favour of the workman, holding his termination against law.**

9. **ISSUE NO.3:-**

Since the workman was not employed against a regular vacancy or by following the recruitment procedure, his reinstatement is not justified in law and keeping in view the tenure of his service, nature of employment, nature of work, he is held entitled to lump sum compensation of Rs.30,000/- to be paid to him within 30 days from the date of publication of Award in Official Gazette.

10. On the basis of the above discussion, following award is passed:-

A. *The action of the management of General Manager, Telecom, BSNL, Indore in terminating the services of Shri Prakash S/o Shri Ramlal Gehlot since 1989 without following the provisions of the ID Act is held not just and legal.*

B. **The workman is held entitled to lump sum compensation of Rs.30,000/- to be paid to him within 30 days of Date of publication of Award in Official Gazette.**

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 27-9-2022

नई दिल्ली, 18 अक्टूबर, 2022

का.आ. 1006.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **महाप्रबंधक, आयुध निर्माणी खमरिया, जबलपुर** के प्रबंधन के संबद्ध नियोजकों और **श्री सुरेश कुमार चौधरी, कामगार**, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट(संदर्भ संख्या **CGIT/LC/R/37/2011**) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 17/10/2022 को प्राप्त हुआ था।

[सं. एल- 14012/21/2010- आईआर-(डीयू)]

डी.के.हिमांशु, अवर सचिव

New Delhi, the 18th October, 2022

S.O. 1006.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. CGIT/LC/R/37/2011**) of the **Central Government Industrial Tribunal cum Labour-Jabalpur**, as shown in the Annexure, in the Industrial dispute between the employers in relation to **The General manager ,Ordinance Factory Khamaria,Jabalpur and Shri Suresh Kumar Choudhary,Worker**, which was received along with soft copy of the award by the Central Government on 17/10/2022.

[No. L- 14012/21/2010- IR (DU)]

D.K.HIMANSHU, Under Secy.

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/37/2011

Present: P.K.Srivastava, H.J.S..(Retd)

Shri Suresh Kumar Choudhary,

Ex Labour(SS) TN

CE/72/65037,H.No.1812

C/o House of Shyamlal Choudhary,

Sanjay Gandhi Ward,Kanchghar

Jabalpur(M.P.)

... Workman

Versus

The General manager

Ordinance Factory Khamaria

Jabalpur-482005

... Management

AWARD

(Passed on 23-9-2022.)

As per letter dated 5/5/2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-14012/21/2010-IR(DU). The dispute under reference relates to:

“Whether the action of the management of General manager, Ordinance Factory, Khamaria, Jabalpur in terminating the services of Shri Suresh Kumar Chaudhary w.e.f. 23/5/2009(A.N.)is legal and justified?What relief the workman is entitled to? .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defense.

2. The case of the workman as stated in his statement of claim is that he has been in the services of the Management since last 23 years and worked to the satisfaction of his superiors. On 12-4-2008 at about 1 p.m. he was searched by management official at Gate No.1 and was found in unauthorized possession of certain instruments and company properties mentioned in para three of the statement of claim. A departmental inquiry was instituted against him. In fact he was framed due to departmental rivalry. The inquiry conducted was not proper and legal. The charges were not proved. The controlling Authority, without considering the material in inquiry, wrongly conceded with the finding of the Inquiry officer and passed the punishment order terminating his services from 23-5-2009 which is dis-proportionate to the charge. Accordingly, it has been prayed that holding the action of the management in terminating the services unjustified and against law, he be entitled to be reinstated with all back wages and benefits.

3. According to the management, the workman was apprehended by Security Staff at Gate No.1 on 12-4-2008 1300 hours and following materials were recovered from his possession which he has concealed on his person for taking out of factory stealthily :-

No.1 – One container made of brass weighing 600gms.

No.2- Two number of copper wire (length 6.5” and 6inch)

No.3- One knife length 16 cm

No.4-One Hackshaw blade(about 12 cm long)

No.5- One brass Strip 3 x 7cm

No.6- Two brass rod length 45cm

The Orderly Officer and Security staff were present during the search. After recording statement of the workman in presence of these persons, the recovered articles were sealed and a seizure memo was prepared. He was placed under suspension on 13-4-2008 and a memorandum of charge sheet under Rule 14 of CCS(CC & A) Rules 1965 was issued to him on 14-3-2008 for misconduct by way of unauthorized entry in the factory on the date without permission while not on duty on that day, unauthorized possession of government material was found on search and attempted theft of these government material. The workman was asked to submit the reply on the memorandum. He did not submit any reply. His wife submitted a representation wherein in she has stated that her husband is mentally unstable and under the control of evil spirit and is being treated by wizard due to evil effect. He prays ignorance about his activities and the involved problem. The Management conducted a departmental inquiry vide order dated 9-8-2008. The workman did not turn up in the inquiry inspite of repeated intimation to him. The Inquiry Officer after recording statements of

witness submitted his inquiry report holding the workman guilty for the charges. A copy of inquiry report was sent to the workman for the submission. The workman did not file any representation and hence he was awarded penalty of dismissal from service vide order dated 23-5-2009. He preferred an appeal on 1-7-2009 which was dismissed after hearing. He has been in the habit of committing mistake of different types as mentioned in para-11 of defense for which he was punished. According to the management the inquiry was conducted legally and properly. The charges were rightly held proved and punishment is proportionate to the charge. The management has accordingly requested to answer the reference against the workman.

4. Following issues were framed by my learned Predecessor on the basis of pleading vide his order dated 8-11-2013:-

1. Whether enquiry conducted against workman is legal and proper?

2. Whether the misconduct alleged against the workman is proved from evidence in Enquiry Proceedings?

3. Whether the punishment of termination of workman by management of IInd party is legal and proper?

4. If so, to what relief the workman is entitled to?

5. ISSUE NO.1:-

Issue No.1 was taken as preliminary issue. Parties were given opportunity to lead evidence.

6. During the proceedings the workman died and his legal representatives were brought on record on the basis of evidence on record. The Preliminary Issue No.1 was decided vide order dated 18-10-2021. The inquiry was held legal and proper. Parties were given opportunity of evidence, if any in support of remaining issues. No evidence was filed by any of the parties.

7. At the stage of argument none appeared from the side of the workman, hence argument of learned counsel for Management Shri A.K. Shashi was heard and record has been perused by me.

8. ISSUE NO.2:-

The management has filed and proved inquiry papers. Perusal of inquiry papers goes to show that statements of four witnesses who are eye witnesses on search were recorded, they have corroborated the charge with respect to unauthorized recovery from the possession of the workman. There is nothing on record in the inquiry papers to doubt these evidences, hence there is no action to disagree from the finding of the Inquiry Officer that the charges are proved against the workman. Hence affirming the finding of the Inquiry Officer, Issue No.2 is answered accordingly.

9. ISSUE NO.3:-

The punishment for such type of misconduct is dismissal as it proved in Rule 14 of CCS(CC & A) Rules 1965. It is admitted proposition of law that the Court cannot sit in appeal or it cannot re-appreciate the evidence relied before Inquiry Officer; in as much as it cannot alter the order or punishment; however, the scope of invoking the powers given under Section 11 A of the Act, by the Labour Court is confined to the condition that the Court should interfere with the order of punishment when it is disproportionate with respect to the misconduct committed or it is harsh.

1. Hon'ble Apex Court in **B.C. Chayurvedi v. Union of India, (1995) 6 SCC 749** while discussing about the scope of judicial review, in disciplinary matters, has observed as under:

“The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mold the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, imposed appropriate punishment with cogent reasons in support thereof.”

2. In **DG, RPF vs. Sai Babu (2003) 4 SCC 331**, Hon'ble Apex Court has observed that:

Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of an discipline required to be maintained, and the department /establishment which the delinquent person concerned works.”

3. In **United Commercial Bank vs. P.C. Kakkar (2003) 4 SCC 364** Hon'ble Apex Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarized the legal position in the following words:

The common thread running through in all these decisions is that the court should not interfere with the administrators' decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury* case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is judicial review is limited to the deficiency in decision-making process and not the decision.

To put it differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof."

4. In **Union of India vs. S.S. Ahluwalia (2007) 7 SCC 257** Hon'ble Supreme Court reiterated the legal position as follows:

"..... The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved."

5. In **State of Meghalaya v. Mecken Singh N. Marak (2008) 7 SCC 580** Hon'ble Supreme Court stated that:

"The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.

6. Hon'ble Apex Court in **Administrator, Union Territory of Dadra and Nagar Haveli vs. Gulbhia M. Lad (2010) 2 SCC (L&S) 101** has observed that :

"The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or the tribunal would not substitute its opinion on reappraisal of facts.

7. Hon'ble Apex Court in **(2011) 1 Supreme Court Cases (L&S) 721** has observed that:

It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, the courts will not interfere with findings of fact recorded in departmental inquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or findings, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.

8. According to the management, there is a history of misconduct committed earlier by this workman for which he has been punished. Keeping in view all the facts, the punishment of dismissal awarded in the case in hand cannot be said to be disproportionate to the charge warranting interference by this Tribunal. **Issue No.3 is answered accordingly.**

9. ISSUE NO.4:-

In the light of the findings recorded earlier, the workman is held entitled to no relief. **Thus Issue No.4 is answered accordingly.**

10. On the basis of the above discussion, following award is passed:-

A. The action of the management of General manager, Ordinance Factory, Khamaria, Jabalpur in terminating the services of Shri Suresh Kumar Chaudhary w.e.f. 23/5/2009(A.N.) is held legal and justified.

B. The workman is held entitled to no relief.

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

नई दिल्ली, 18 अक्टूबर, 2022

का.आ. 1007.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार निदेशक, राष्ट्रीय प्रौद्योगिकी संस्थान, छत्तीसगढ़ के प्रबंधन के संबद्ध नियोजकों और श्री अमृत दास पटेला; श्री लखन दिवाकर; श्री सुरेंद्र कुमार वर्मा, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट(संदर्भ संख्या CGIT/LC/R/18/2014) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 17/10/2022 को प्राप्त हुआ था।

[सं.एल- 42012/81/2013- आईआर-(डीयू)]

डी.के.हिमांशु, अवर सचिव

New Delhi, the 18th October, 2022

S.O. 1007.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/18/2014) of the **Central Government Industrial Tribunal cum Labour-Jabalpur**, as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Director ,National Institute of Technology, Chhattisgarh and Shri Amrit Das Patela; Shri Lakhan Divakar; Shri Surendra Kumar Verma, Worker**, which was received along with soft copy of the award by the Central Government on 17/10/2022.

[No. L- 42012/81/2013- IR (DU)]

D.K.HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/18-2014

Present: P.K.Srivastava, H.J.S..(Retd)

Shri Amrit Das Patela

C/o Sh. Mohan Lal

D-1 Sector-1, Ekta Nagar,

Gurudwara Road,

Gudiyari, Raipur(CG)

2.Shri Lakhan Divakar

S/o of Bhagbali Divakar

C/o Sh. Mohan Lal

D-1 Sector-1, Ekta Nagar,

Gurudwara Road,

Gudiyari, Raipur(CG)

3.Shri Surendra Kumar Verma

S/o Shri Kartikram Verma

V&PO-Nardaha Chowki,

Raipur(Chhattisgarh)

... Workman

Versus

The Director ,
National Institute of Technology,
GE road,Raipur
Chhattisgarh

...Management

AWARD
(Passed on 27-9-2022)

As per letter dated 11/2/2014 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-42012/81/2013(IR(DU)). The dispute under reference relates to:

“Whether the action of the management of National Institute of Technology, Raipur in terminating the services of Shri Amrit Das patella, S/o late Daduran patella, Shri Lakhan Divakar, S/o Bhagbali Divakar & Surendra Kumar Verma S/o Kartikrem Verma, is legal and justified?if not to what relief the workmen are entitled to? 2.National Institute of Technology, Raipur is an Educational establishment t and the Central Government is appropriate Government. 3.The nearest tribunal is CGIT,Jabalpur. .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their statement of claim/defense.

2. The case of the workmen as stated in their statement of claim is that they were appointed by the management as skilled carpenter/Helper/Mistri and continuously worked form 1-8-2008 to October-2012 when their services were terminated without any notice or compensation after their termination, new persons were appointed for these jobs. The action of the Management is thus in violation of Section 25G and 25H of the Industrial Dispute Act. The workman has mainly prayed that the reference be answered in their favour and they be held entitled to reinstatement with back wages and benefits.

3. The case of the Management is mainly that the applicant workman never worked continuously for 240 days in any year. They were daily wagers engaged by management on daily basis subject to availability of work. They were not appointed against any vacancy following recruitment process. Their services were terminated because of non-availability of work for them. They were given work of same category as per requirement of the institute but they were not ready to work. The management did not employ any worker for the same job after 2012. Accordingly the management has prayed that the reference be answered against the workman.

4. In evidence these three workmen filed affidavit of workman Amrit Das Patela and Lakhan Divakar. They appeared for cross-examination by Management, hence their evidence was closed. Management filed affidavit of its witness who proved Exhibit M-1 to M-3. Workman side was not present for his c ross-examination, hence opportunity of cross-examination was closed.

5. At the time of argument also , learned Counsel for workman was not present, hence arguments of learned counsel for Management Shri Praveen Yadav was heard. Learned Counsel for workmen Shri Shailendra Pandey filed written argument which is on record. Management also filed written argument which is on record. I have gone through the record as well.

6. From perusal of record, the following issues come up for determination:-

1) Whether from the evidence on record, the workmen have successfully proved their continuous employment for 240 days in the year preceding the date of their termination?

(2) Whether the action of the management in dis-engaging the workman is justified in law ?

(3) Relief to which the workmen are entitled to?

7. ISSUE NO.1:-

The burden to prove this issue is on the workmen. There is affidavit of two workmen as their examination in chief who never appeared for cross-examination by the Management. Hence their affidavit cannot be read in evidence.

8. The workmen have filed photocopy attendance sheet which they never cared to prove, hence these two photocopy attendance sheet also cannot be read in support of their claim. They have filed photocopy of Passbook which cannot be read in evidence in support of their claim. They have filed a photocopy of order dated 10-5-2012 which goes to show that these workmen were reappointed along with other daily wagers for 90 days only. This document is admitted by Management and is marked as Exhibit W-2. The attendance sheet of the workman from

October-2009 to June-2011 forty two pages photocopy, filed by the workmen has been admitted by the management. This document is marked as Exhibit W-1. Exhibit W-3 is another document admitted by the Management which is a certificate with respect to the workman Lakhan Divakar which goes to show that he worked as a daily wager from 19-7-2010 to 17-1-2011 from 21-1-2011 to 20-7-201 and from 25-7-201 till date of issue of certificate which is 8-12-2011. There is uncross-examined testimony of the management witness wherein he has stated that the workmen were daily wagers. They were offered alternate work of same category which they refused to work. During conciliation, the Management offered them one month notice as recruitment compensation, which they refused. The Management has proved two documents, Exhibit M-1 which is a letter of management to the workmen indicating that they were offered alternate job in same position and asked the workmen to send their consent. Exhibit M-2 is the letter of the Management filed during the conciliation proceedings that the management was ready to pay the retrenchment compensation. These two documents have been admitted from the workman side.

9. Thus from the above mentioned evidence, it comes out that on the basis of Exhibit W-1 and W-2 and W-3 admitted by the management, it can be said that the workmen have successfully proved their continuous engagement of 240 days in the year preceding the date of their termination and is held accordingly. **Issue No.1 is answered accordingly.**

10. ISSUE NO.2:-

Before entering into any discussion it is necessary to refer to Section 25G and Section 25H of the Industrial Disputes Act, 1947 which are as follows:-

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25H. Re-employment of retrenched workmen.- Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons.

In the light of the findings recorded at Issue No.1, the termination of workmen is held against Section 25G of the Industrial Disputes Act, 1947. **Issue No.2 is answered accordingly.**

11. ISSUE NO.3:-

As it is established from the evidence referred to above that the management was ready to offer them retrenchment compensation during the conciliation proceedings and was also ready to offer them alternate job in the same category which the workmen had refused. Hence, the workmen are held not entitled to any lump sum compensation, rather they are entitled to get only one month salary as retrenchment compensation. **Issue No.3 is answered accordingly.**

12. On the basis of the above discussion, following award is passed:-

A. The action of the management of National Institute of Technology, Raipur in terminating the services of Shri Amrit Das patella, S/o late Daduran patella, Shri Lakhan Divakar, S/o Bhagbali Divakar & Surendra Kumar Verma S/o Kartikrem Verma, is held not legal and proper.

B. The workmen are held entitled to one month salary which they were getting in the month of their termination.

C. No order as to costs.

13. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K.SRIVASTAVA, Presiding Officer

DATE: 27-9-2022

नई दिल्ली, 18 अक्टूबर, 2022

का.आ. 1008.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक दूरसंचार, बीएसएनएल, सीटीओ कंपाउंड, इंदौर (म.प्र.) के प्रबंधन के संबद्ध नियोजकों और अंचल सचिव, राष्ट्रीय दूरसंचार कर्मचारी संघ, इंदौर (म.प्र.), के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट (संदर्भ संख्या CGIT/LC/R/104/2005) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 17.10.2022 को प्राप्त हुआ था।

[सं. एल-40012/57/2005- आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th October, 2022

S.O. 1008.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/104/2005) of the Central Government Industrial Tribunal cum Labour-Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General manager Telecom, BSNL, CTO Compound, Indore (M.P.) and The Circle Secretary, National Federation of Telecom Employees, Indore (M.P.), which was received along with soft copy of the award by the Central Government on 17.10.2022.

[No. L- 40012/57/2005- IR (DU)]

D. K.HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/104/2005

Present: P. K. Srivastava, H.J.S..(Retd)

The Circle Secretary
National Federation of Telecom Employees
41-A, Vijay Nagar, Indore (M.P.)

Versus

... Workman

The General manager Telecom
BSNL CTO Compound
Old Residency Area
Indore (M.P.)

... Management

AWARD

(Passed 27-9-22)

As per letter dated 26-9-2005 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/57/2005-IR(DU).The dispute under reference relates to:

“Whether the action of the management of General Manager Telecom, BSNL, Indore in terminating the services of Shri Mahesh S/o Shri Paragji Pal w.e.f. 1990 is legal and justified? If not, to what relief the workman is entitled to and from which date? .”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have appeared and filed their respective statement of claim/defence.

2. Accordingly to the workman he was engaged in Telecommunication Department in District Indore in the year 1987. He was dis-engaged in the beginning of year 1990. He worked continuously for 240 days in the year preceding the date of his dis-engagement. His services were terminated by Management under the oral orders which is in violation of Section 25F of the Industrial Disputes Act 1947. A case with respect to illegal retrenchment of 159 workmen was filed by the Union in the year 1990 before Central Administrative Tribunal Bench as OA.No. 229/1990(Manoj Kumar and Others Vs. Union of India) which was decided by the Tribunal vide its order dated 19-9-1995. It was ordered that those daily wagers who were engaged before 22-6-1988 are regularized and those daily wagers who were engaged after 22-6-1988 their termination of services were set aside. This order was never

complied with. Accordingly, the workman has sought that he be held entitled to regularization setting aside his termination in the light of order of Central Administrative Tribunal. Accordingly setting aside his termination, he be reinstated with all back wages and benefits.

3. The case of workman is mainly that firstly the judgment of Central Administrative Tribunal is not applicable to the present workman because according to himself, he was engaged as a daily wager in the year 1987. Secondly he never completed 240 days in continuous engagement of the Management as claimed by him, hence his disengagement is not against law. Thirdly the dispute has been raised after considerable delay, hence is barred by delay and laches on the part of the workman. Accordingly the workman has prayed that the reference be answered against the workman.

4. In evidence, the workman has examined himself on oath and has been cross-examined. The Management has examined its witness Basant Kumar Yadav, Divisional Engineer on oath who has been cross-examined by workman. The workman has filed and proved three photocopy documents Exhibit W-1 is the receipt of Union Membership, Exhibit W-2 is the identity card and Exhibit W-3 is the personal record of the workman on the basis of muster roll. As it comes out from perusal of record that once this case was fixed for final arguments in the year 2009 by my learned Predecessor, it remained at the stage of argument till 7-5-2004, thereafter it was fixed for Award and again deputed back for evidence. Parties again filed their evidence. The workman again examined himself on evidence and was cross-examined. The Management also examined its witness Nitin Kumar Soni and he was cross-examined.

5. I have heard oral arguments of Shri Mukesh Soni, learned counsel appearing for workman and Shri R.S.Khare, learned counsel appearing for Management. I have gone through the record as well as the written arguments filed by the parties.

6. On perusal of record, the following issues comes up for determination:-

- (1) **Whether the workman has successfully proved his continuous engagement for 240 days or more in any year, including the year preceding the date of his dis-engagement.?**
- (2) **Whether the action of the management in terminating the services of the workman is justified in law or not?**
- (3) **Relief if any the workman is entitled to?**

7. **ISSUE NO.1:-**

The burden to prove this issue is on the workman and he has corroborated his case in his affidavit filed as his Examination in chief. It is supported by Exhibit W-2 a statement regarding the working days, hence the case of the workman that he worked for 240 days in the year preceding the date of his termination is held proved. . On the other hand, management witness has corroborated the case of management in his statement on oath. From oral evidence and documents Exhibit W-1, it is held that the workman worked for 241 days in the year preceding the date of his termination. **Issue No.1 is answered accordingly.**

8. **ISSUE NO.2:-**

IN the light of the findings recorded in Issue No.1, since it is established that no notice or compensation was given to the workman on his termination, **Issue No.2 is answered in favour of the workman, holding his termination against law.**

9. **ISSUE NO.3:-**

Since the workman was not employed against a regular vacancy or by following the recruitment procedure, his reinstatement is not justified in law and keeping in view the tenure of his service, nature of employment, nature of work, he is held entitled to lump sum compensation of Rs.30,000/- to be paid to him within 30 days from the date of publication of Award in Official Gazette.

10. On the basis of the above discussion, following award is passed:-

- A. **The action of the management of General Manager Telecom, BSNL, Indore in terminating the services of Shri Mahesh S/o Shri Paragji Pal w.e.f. 1990 is held not legal and justified.**
- B. **The workman is held entitled to lump sum compensation of Rs.30,000/- to be paid to him within 30 days of publication of Award in Official Gazette.**

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

DATE: 27.9.2022

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 18 अक्टूबर, 2022

का.आ. 1009.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार निदेशक, भारतीय दलहन अनुसंधान संस्थान, कानपुर नगर के प्रबंधन के संबद्ध नियोजकों और श्री रमेश चंद्र शर्मा, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर पंचाट (संदर्भ संख्या 45/2017) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.11.2022 को प्राप्त हुआ था।

[सं. एल- 42012/2/2010- आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th October, 2022

S.O. 1009.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 45/2017) of the Central Government Industrial Tribunal cum Labour Court – Kanpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Indian Institute of Pulse Research, Kanpur Nagar and Shri Ramesh Chandra Sharma, worker which was received along with soft copy of the award by the Central Government on 10.11.2022.

[No. L-42012/2/2010-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—CUM—LABOUR COURT KANPUR

PRESENT : SOMA SHEKHAR JENA, HJS (Retd.)

I.D. No. 45/2017

Ref. No. L-42012/2/2010-IR(DU) dated: 04.07.2017

BETWEEN :

Sh. Ramesh Chandra Sharma,
House No. 23, Barasitapur,
University,
Kanpur Nagar

AND

The Director Indian Institute of Pulse Research,
G.T. Road, Kalyanpur,
Kanpur Nagar – 208024

AWARD

1. By order No. L-42012/2/2010-IR(DU) dated: 04.07.2017, the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute for adjudication to this CGIT-cum-Labour Court, Kanpur.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF IIPR, KANPUR IN TERMINATING THE SERVICES OF SHRI RAMESH CHANDRA SHARMA S/O SHRI SONE LAL W.E.F. 18/08/1996 IS JUST FAIR AND LEGAL IN VIEW OF EVIDENCE CERTIFIED BY IIPR (COPY ENCLOSED) AND ALSO THE FACT THAT HIS CASE WAS REJECTED BY CGIT, KANPUR VIDE AWARD DATED 10/12/1996 OF ID NO. 46/91. IF NOT, WHAT RELIEF THE SAID WORKMAN IS ENTITLED TO AND FROM WHICH DATE.”

3. The case of the workman, Ramesh Charndra Sharma, that the appointment of the plaintiff was done in the establishment of the respondent establishment on 01.04.1982 on the permanent post of labourer through the employment office Kanpur Nagar. Claimant workman had been doing agricultural work on the post of labourer such as weeding, harvesting, threshing, plant protection systems such as ploughing, sowing,

irrigation, etc. Preparation of planting by filling the produce in sacks, leveling the bumpy ground, spraying chemical fertilizers, insecticide and spraying powder etc. The job which was done by the claimant are still done in the establishment and is going to continue in future. The produce done by the claimant workman and other workers in the premises of the establishment is sold at a good price by the management through various organizations at the sales centres and at international level. The work and behaviour of the claimant labourer was satisfactory, there had never been any complaint against him by the departmental officers. Before the termination of the services of the plaintiff by the defendant, the plaintiff has been paid a total of Rs 2127 / - as monthly salary as per the order of the Director of the respondent establishment.

4. The management of the Indian Institute of Pulse Research, Kanpur has filed its written statement; wherein it has denied the claim of the workman and has submitted that the workman had never been appointed by the opposite party in any capacity; nor did he undergo any recruitment process, as such, there was no termination of his services at any point of time as there was no relationship of employee and employer between the workman and the India Institute of Pulse Research at any point of time. The so called workman concerned does not come under the definition of 'workman' under section 2(s) of the Industrial Disputes Act, 1947 as such, the so called workman concerned was never employed by the answering employer directly or indirectly, hence the so called workman concerned is not entitled to any benefit or relief as mentioned in the reference order.

5. The workman has filed its rejoinder; wherein apart from reiterating averments already made in the statement of claim, has submitted that he was an employee of the Indian Institute of Pulse Research.

6. Heard learned authorized representatives of the parties at length; and perused entire evidence on record.

7. The main point to be answered in this proceeding is as follows:

Whether this reference proceeding is maintainable in eye of law. It is vehemently contended on behalf of the workman that he had worked for 240 days during the preceding 12 months prior to his termination by the O.P. but the O.P. management wrongly calculated days of work as 175 days causing great prejudice to the concerned workman. The workman has referred to the calculation sheet submitted by him. On behalf of the O.P. side, it is vehemently contended that this Tribunal lacks jurisdiction to embark upon adjudication of the reference. It is contended that in ID Case No. 46 of 1991 in which petitioner Ramesh Chandra Sharma was the claimant petitioner award had been delivered by this Tribunal negating his claim for reinstatement and back wages thereafter the order of this Tribunal was challenged by Ramesh Chandra Sharma before the Hon'ble High Court of Allahabad in Civil Misc. WRIT Petition No. 10415 of 1997. The operative portion of the order of the Hon'ble High Court of Allahabad dated 04/07/2001 is read as follows:

The petitioners contentions were that while terminating their services the provisions of section 25-F of the Industrial Disputes Act(central) 1947 have not been complied with. The Tribunal has recorded a categorical findings that none of the workmen have completed 240 days in the preceding calendar year and therefore it was not necessary for the employer to comply with the provisions workmen concerned. That being a legal position the findings recorded by the Tribunal do not require any interference by this court. The writ petition is devoid of any merit and is hereby dismissed.

The aforesaid order of the Hon'ble Allahabad High Court has not been challenged before any higher forum and the order of the Hon'ble Allahabad High Court dated 04/07/2001 in Civil Misc. WRIT Petition No. 10415 of 1997 attained finality and there remains no legal scope to reopen the matter on factual aspects.

In (2019) 11 Supreme Court Cases 323 Chairman and Managing Director, Fertilizers and Chemicals Travancore Limited and Another Versus General Secretary Fertilizers and Association and others

Civil Appeals No. 3803 of 2019 with No. 3804 of 2019, decided on April 11, 2019 it has been authoritatively affirmed in the following language:

It is well established that although the entire Civil Procedure Code is not applicable to industrial adjudication, the principles of res judicata laid down under section 11 of the Code are applicable including the principles of constructive res judicata. Thus in State of U.P. v. Nawab Hussain it was held that the dismissal of a writ petition challenging disciplinary proceedings on the ground that the charged officer had not been afforded reasonable opportunity to meet the allegations against him, operated as res judicata in respect of the subsequent suit in which the order of dismissal was challenged on the ground that it was incompetently passed. This Court also held: (SCC p. 808)

It may be that the same set of facts may give rise to two or more causes of action . If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation , that would aggravate the burden of litigation . Courts have therefore treated such a course of action as an abuse of its process.

The principle of res judicata operates on the court . It is the courts which are prohibited from trying the issue which was directly and substantially in issue in the earlier proceedings between the same parties , provided the court trying the subsequent proceeding is satisfied that the earlier court was competent to dispose of the earlier proceedings and that the matter had been heard and finally decided by such court . Here the parties to the writ petition filed by the respondent in the Madras High Court and the industrial dispute were the same. The cause of action in both was the refusal of the appellant to allow the respondent to rejoin service . The Madras High Court was competent to decide the issue which it did with a reasoned order on merits and after a contested hearing . This was not a case where the earlier proceedings had been disposed of on any technical ground as was the case in *Workmen v . Cochin Port Trust*¹⁰ and *Pujari Bai v . Madan Gopal* . The "lesser relief " of reinstatement which was the subject - matter of the industrial dispute had already been claimed by the respondent in the writ petition . This was refused by the High Court . The correctness of the decision in the writ proceedings has not been challenged by the respondent . The decision was , therefore , final . Having got an adverse order in the writ petition , it was not open to the respondent to re-agitate the issue before the Labour Court and the Labour Court was incompetent to entertain the dispute raised by the respondent and decide the matter in the face of the earlier decision of the High Court in the writ proceedings."

The third case is *ZP Engg . Division v. Digambara Rao*¹² . In this case also , this Court placing reliance on the decision in *Kulothangan* ' reiterated the same view , earlier taken by this Court in *R.C. Tiwari* with these words : (*ZP Engg . Division* case 12, SCC p. 268, para 15)

"15..... It is now well settled that the general principle of res judicata applies to an industrial adjudication."

In **Special Appeal Defective No. 227 of 2017 Union of India Thru Secy. & 2 Others Versus Ramesh Chandra Sharma & Another** it has been observed by Hon'ble Allahabad High Court in the following words:

In view of this, the order imposing cost of Rs. 20,000/- is hereby quashed and set aside. The Special Appeal is partly allowed and we hope and trust that the matter would be revisited and the authorities are free to take a call as to whether the matter can be reopened for fresh scrutiny, once issue has already been adjudicated in ID No. 46/91, and as to whether there is any fresh ground indicated by petitioner-opposite party.

In view of the discussions stated above the points: whether the workman had worked for 240 days prior to termination and whether his termination was bad for non compliance of section 25 of Industrial Disputes Act have been set at rest by order of the Hon'ble High Court of Allahabad in Civil Misc. WRIT Petition No. 10415 of 1997. In other words, by operation of constructive res judicata enshrined in section of 11 of the Code of Civil Procedure this reference proceeding is unsustainable in eye of law.

Merely because the claimant claims to have worked for 246 days during the preceding 12 months prior to termination, he acquires no right of reinstatement with back wages.

In view of the discussions stated above the reference is answered against the claimant/workman.

Parties are left to bear their respective costs.

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 18 अक्टूबर 2022

का.आ. 1010.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड, फर्रुखाबाद के प्रबंधन के संबद्ध नियोजकों और श्री भैयालाल, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर पंचाट(संदर्भ संख्या 94/2010) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 10.11.2022 को प्राप्त हुआ था।

[सं. एल- 40012/39/2010- आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th October, 2022

S.O. 1010.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 94/2010) of the Central Government Industrial Tribunal cum Labour Court –Kanpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Farukhabad and Shri Bhaiyalal, worker which was received along with soft copy of the award by the Central Government on 10.11.2022.

[No. L- 40012/39/2010-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—CUM-LABOUR COURT KANPUR

PRESENT : SOMA SHEKHAR JENA HJS (Retd.)

I.D. No. 94/2010

Ref. No. L-40012/39/2010- IR (DU) dated: 05.10.2010

BETWEEN:

Shri Bhaiyalal S/o Mewalal,
Village Dilip Nagar, Post Post Bela Mau Saraya,
Kannauj.

AND

The General Manager
Bharat Sanchar Nigam Limited,
Farukhabad.

AWARD

This award arises out of the Industrial Dispute referred to this Tribunal in notification no. L-40012/39/2010- IR (DU) Dated 05/10/2010 issued by the Government of India Ministry of Labour and Employment as stated in the Schedule below.

SCHEDULE

“Whether the action of the management of Bharat Sanchar Nigam Limited, Farukhabad, in terminating the service of their workman Shri Bhahiyalal w.e.f. 17/09/2009 is legal and justified? If not, what relief the workman is entitled to?”

The statement of claim has been submitted by the workman side with averments which may be summarized as follows:

The claimant workman Bhaiya Lal was appointed as Line Man in Bharat Sanchar Nigam Limited Farukhabad (herein after stated in short as the BSNL) in January 2000 as permanent employee of BSNL Farukhabad. Attendance of the claimant workman on duty was recorded in register. It is stated that the claimant was paid wages through the vouchers and his wages were deposited in his account. Initially the claimant was paid wage at the rate of Rs. 40 per day Claimant was discharging his duties diligently. Later as the claimant demanded higher wages in accordance with law on 17/09/2009 he was illegally retrenched. Due to illegal retrenchment claimant became jobless after 17/09/2009. Claimant has prayed for reinstatement in the job of the O.P. employer w.e.f. 17/09/2009 along with back wages and compensation with regularization in the job.

On behalf of the O.P. management written statement has been filed with averments which may be concisely stated as follows:

It is averred by O.P. management that the claimant workman was never employed nor appointed by the management of the BSNL Farukhabad. It is submitted that there was no employer employee relationship between the BSNL and the claimant. It is stated by O.P. that claimant was never appointed on any post of the O.P. management and no appointment letter nor any order was ever issued to him by the O.P. management. It is averred that management of the O.P. had never paid wages to the claimant. In substance, it is submitted by the O.P. management that as there was no employer-employee relationship between the O.P. management and the claimant. There was no termination of the claimant from job by the O.P. It is further submitted by the O.P. that the reference was bad in law and this Tribunal is divested of authority to embark upon hearing of the disputes.

In the rejoinder the claimant's side asserted that the O.P. was the employer of the claimant. Claimant has further asserted that copies of the documents in his possession establish employer-employee relationship of the O.P. with the claimant workman. Claimant/workman in the rejoinder has reiterated his claim stated in the statement of claim.

For adjudication of this Industrial Dispute the following points are to be answered:

1. Whether there was employer-employee relationship between the O.P. management and the claimant.
 2. In the proved circumstances of this case what relief can be granted in favour of the claimant.
- Copies of the good number of documents have been filed by the claimant asserting that the claimant was employee Line Man of the O.P. management. On behalf of the claimant it is stated that by ACG documents the claimant was paid wages and the ACG were issued by the O.P.. It is further vehemently submitted that from the year 2000 claimant workman had been working as Line Man till his disengagement and in support of such stand claimant workman has relied on experience certificate. It is submitted by the claimant's side that the O.P. management has taken resort to dirty trick of withholding the relevant documents for creating confusion with regard to employment of the claimant under O.P. management. It is vehemently submitted that the appointment of claimant was no back door entry. In support of his stand claimant has himself examined as his witness. The statement of the claimant in course of cross-examination speaks that advertisement for the post of Line Man was published in national newspaper. In course of cross-examination the claimant has made candid statement that he was recruited by verbal order and that the papers submitted with regard to payment of wages do not bear signatures of the officer authorized to counter sign. The deposition of witness Prem Chandra Pandey before the Tribunal speaks that he is a retired Phone Mechanic and the claimant workman and some other workmen were laid off without any issuance of any written order. The deposition of witness Manoj Kumar Pandey examined on behalf of the workman shows that he was appointed as Line Man but he worked as clerk. His deposition speaks contradictory version. This witness Manoj Kumar Pandey has deposed that no advertisement was published by the B.S.N.L.. From cumulative reading of the deposition made by the claimant workman and his witnesses it is presumable that the claimant is unable to produce any order of regular appointment in any vacancy under the O.P. management and due to lack of non production of any letter or order of appointment it cannot be concluded that the claimant workman was duly appointed employee of O.P. management. In other words the evidence adduced by the claimant side is fragile to establish that there was employer-employee relationship between the claimant and the O.P. management.
 - In the discussion made in the foregoing paragraph it has been concluded that the evidence adduced by the claimant workman side fails to prove that there was direct employer-employee relationship between the management B.S.N.L. and the claimant workman. It is doubtful if Bhaiya Lal has actually acquired the requisite qualification to work as Line Man in Telecom Industry.

In such scenario it is doubtful if the observations of the Hon'ble Supreme Court in *Bank of Baroda Vs. Ghemarbhai Harjibhai Rabari* reported in [2005 (105) FLR 383] can be followed when there is no evidence that Bhaiya Lal and the others claimants were duly appointed by the BSNL.

In *Bhavnagar Municipal Corporation ETC. Vs. Jadeja Govubha Chhanubha and another* reported in [2015 (144) FLR 177] instead of allowing reinstatement with back wages. The Hon'ble Supreme Court allowing compensation of the claimant workman.

In *Devinder Singh Vs. Municipal Council, Sanaur* reported in [2011 (130) FLR 337] it has been observed in the following words:

The plea of the respondent that the action taken by it is covered by section 2(00) (bb) was clearly misconceived and was rightly not entertained by the Labour Court because no material was produced by the respondent to show that the engagement of the appellant was discontinued by relying upon the terms and conditions of the employment.

The observations of the Hon'ble Supreme Court in the aforesaid case laws were made with special reference to the circumstance of that case projected before the Hon'ble Apex Court. In the present case it is seen that the claim of engagement of the workman Bhaiyalal in BSNL is of doubtful authenticity.

In the scenario the Case Law *Devinder Singh Vs. Municipal Council, Sanaur* cannot be reasonably applied to the benefit of the claimant.

Since the workman has failed to establish that he was a duly appointed employee of the O.P. management (BSNL) the direction for reinstatement with back wages is impermissible in law. On the other hand the plethora of documents filed on behalf of the workman some how indicate that Bhaiya Lal might have rendered work for the benefit of the BSNL though his evidence fails to prove that he was a workman under the BSNL.

On behalf of the workman Case Law Deepali Gundu Surwase Vs. Kranti Junior Adhyapak and others reported in [2013 (139) FLR 541] has been referred in the aforesaid case law it is evident that claimant Deepali Gundu Surwase was regularly appointed lecturer her claim of back wages cannot be equated with the instant case in which the appointment and working of Bhaiyalal and other workman under BSNL is shrouded with confusion.

The other Case Laws Bhuvanesh Kumar Dwivedi Vs. M/s Hindalco Industries Ltd. [2014 (142) FLR 20], Ajaypal Singh Vs. Haryana Warehousing Corporation [2015 (145) FLR 425], Harjinder Singh Vs. Punjab State Warehousing Corporation [2010 (124) FLR 700], The Chief Engineer, Rajasthan State Electricity Board, Jaipur Vs. Judge, Addl. Labour Court Rajasthan and Anr. 1990 LLR 410 (SC), U.P. State Corporation Ltd. Vs. Om Prakash Upadhyay [2002 (93) FLR 600], BSNL Vs. Bhurumal [2014 (140) FLR 901], Deputy Executive Engineer Vs. Kuberbhai Kanjibhai [2019 (160) FLR 651], State of Uttarakhand and another Vs. Rajkumar [2019 (160) FLR 791], Superintending Engineer, TWAD Board and another Vs. M. Natesan etc. [2019 (162) FLR 799], Jayantibhai Vs. Municipal Council, Narkhed and others [2020 (164) FLR 92], Radhey Shyam and another, Petitioners Vs. District Judge, Moradabad and others 1997 L.A.B. I.C. 743, Hindustan Lever Mazdoor Sabha Vs. State of U.P. and others C.M.W.P. No. 24313 of 1989, U.P. State Corporation Ltd. Vs. Presiding Officer, Labour Court, Gorakhpur and another [2000 (85) FLR 879], R.S.R.T.C., Jaipur Vs. Jagdish Vyas and others 1994 LAB. I.C. 1925, State of Gujarat and another Vs. Chauhan Ramjibhai Karsanbhai [2004 (102) FLR 347], Kerala State Coir Corporation Ltd. Vs. Industrial Tribunal O.P. No. 6767 of 1990, U.P. State Electricity Board Vs. Pooran Chandra Pandey and others [2008 (116) FLR 1172] have been pronounced in dissimilar content and cannot be completely followed in this case.

In between State of Karnataka and others and Ganapathi Chaya Naik and others [2010 (124) FLR 717] the Hon'ble Supreme Court case allowed regularization with back wages where recruitment was found not as per recruitments rules.

Regularization in the post of Line Man may amount to flagrant deviation from the principles enunciated in Indian Drugs and Pharmaceuticals Ltd. Versus Workman, Indian Drugs and Pharmaceuticals Ltd. Appeal (civil) 4996 of 2006 as pronounced by the Hon'ble Supreme Court of India.

It is submitted on behalf of the workman side that the engagement of Bhaiya Lal cannot be equated with back door entry. Though such submission has been advanced it cannot be brushed aside that the documents filed on behalf of the workman side even taken as whole failed to prove that at any point of time Bhaiya Lal was actually selected to be appointed as Line Man in the BSNL. The burden to establish his relationship with the BSNL has not been duly discharged. The plethora of documents filed on behalf of the workman can be treated as bunch of papers of doubtful authenticity. At this point it is also pertinent to state that the BSNL had derived benefits out of the work of Bhaiya Lal and such other casual workers though they were not appointed by the BSNL.

Their working under the BSNL though found to be of hazy origin in view of the circumstances of this proceeding of compensation can be awarded for the claimant workman. At one point Bhaiya Lal asserts that he did work for BSNL for 10 to 13 years, it may be a fact that Ravindra Kumar Mishra and Rakesh Kumar Dubey have won their cases but their cases cannot be compared with the status of Bhaiya Lal. The disengagement of Bhaiya Lal w.e.f. 14/09/2009 cannot be treated as illegal retrenchment or illegal lay off but in view of the evidence adduced before the Tribunal compensation can be awarded taking resort to guess work. For the sake of clarification it can be stated here that a long time has elapsed after disengagement of Bhaiya Lal on 14/09/2009. There is no concrete evidence of Bhaiya Lal that he has gone without any kind of employment after 14/09/2009 though he claims to have worked as Line Man.

Considering the whole scenario O.P. management is direct to pay lump sum compensation of One Lakh Fifty Thousand to the claimant Bhaiya Lal. The compensation amount shall be deposited in the account of claimant within one month after publication of the award failing which O.P. management shall pay simple interest at the rate of 7.5% per annum till the whole amount is cleared.

The reference under adjudication is answered accordingly.

Kanpur.

September, 2022

Let two copies of this award be sent to the Ministry for publication.

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2022

का.आ. 1011.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल.लिमिटेड प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय नंबर 1, धनबाद के पंचाट (संदर्भ संख्या 51/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.09.2022 को प्राप्त हुआ था।

[सं. एल-22012/153/2001-आई.आर. (सीएम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 19th October, 2022

S.O. 1011.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2002) of the Central Government Industrial Tribunal-cum-Labour Court No.1, DHANBAD as shown in the Annexure, in the industrial dispute between the Management of E.C.Ltd. and their workmen, received by the Central Government on 26.09.2022.

[No. L-22012/153/2001-IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 51/2002

Employer in relation to the management of E.C.L. Khanij Samuh, Godda, Jharkhand

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : None

For the workman. : None

State : Jharkhand.

Industry:- Coal

Dated 30.08.2022

AWARD

By Order No.L-22012/153/2001-(IR(CM-II)) dated 01.05.2002 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of M/s. ECLtd., Rajmahal Group of Mines, PO: Barasingra, Godda in not employing Smt. Joshpin Tudu, W/o Late Sh. Ibrahim Muradi, Ex-Guard on compensatory ground is legal and justified? If not, to what relief Smt. Joshphin Tudu is entitled to?”

2. This reference is received on 04/06/2002 by this Tribunal in which the workwoman Smt. Joshphin Tudu had been advised to submit statement of claim along with relevant document before the Tribunal within fifteen days of receipt of the reference but the workwomen did not appear before the Tribunal. However after receipt of the reference, both parties were noticed but the management did not appear before the Tribunal but the workwomen appeared on 04/10/2021 and orally submitted that she did not want to contest the case. However last chance was given to the both the parties for appearance. Thereafter the concerned workwomen failed to appear before the Tribunal. Now Case is pending since 04/06/2002 and workwoman as well as management is not appearing before Tribunal. So, it is felt that workwoman has lost its interest in this matter. Hence “No Claim” Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2022

का.आ. 1012.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह – श्रम न्यायालय नंबर 1, धनबाद के पंचाट (संदर्भ संख्या 38/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.09.2022 को प्राप्त हुआ था।

[सं. एल-22011/8/2010.आई.आर. (सीएम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 19th October, 2022

S.O. 1012.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2010) of the Central Government Industrial Tribunal-cum-Labour Court No.1, DHANBAD as shown in the Annexure, in the industrial dispute between the Management of Food Corporation of India and their workmen, received by the Central Government on 26.09.2022.

[No. L-22011/8/2010 – IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947**Reference: No. 38/2010**

Employer in relation to the management of Food Corporation of India, Regional Office, Ranchi

AND**Their workman****Present:** Shri Dinesh Kumar Singh, Presiding Officer**Appearances:**

For Employer : Sri B.K. Pathak, Advocate

For workman : Sri Ganesh Prasad, Advocate

State : Jharkhand.

Industry:- Coal

Dated 29.08.2022

AWARD

By Order No.L-22011/8/2010 (IR(CM-II)) dated 08.06.2010, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE**“Whether the actions of the Management of Food Corporation of India, Regional Office, Ranchi for**

- (i) Withholding of annual increments due on 2008 & 2009;**
- (ii) Shifting of month of annual increment from January to June; and**
- (iii) Denying regularization of services with payment of wages for the period from 10/07/2007 to 19/12/2007 to Mr. Rajesh Kumar, Ancillary Labour is legal and justified?**

To what relief is the workman concerned entitled?”

2. After receipt of the reference, both the parties were noticed. The General Secretary FCI Handling Workers Union, Paharganj, New Delhi has filed his written statement of claim on 28/03/2017 and the Area Manager of FCI, Dhanbad has filed its written statement-Cum-Rejoinder on 18/01/2018.

3. The General Secretary FCI Handling Workers Union, Paharganj, New Delhi has filed rejoinder to the written statement of the management on 01/02/2019.

4. The claim of the sponsoring union as per its Statement of Claim, in brief, is as follows:-

That the concerned workman namely Rajesh Kumar was posted as Departmental Ancillary Labour at FCI, FSD, Koderma since 1984 as DPS, but on account of joining by him as a member of Food Corporation of India Handling-Workers Union in the year 2006 from the Food Corporation of India Workers Union, the management of FCI started harassing and pressurizing him to return to the erstwhile Union but he did not bow down to the pressure put on him by the administration. Subsequently the concerned workman Rajesh Kumar was transferred from Koderma to Daltanganj vide order 10/07/2006 and this order was withdrawn vide order dated 19/20-07-2006 till further orders but Rajesh Kumar was again transferred from FSD, Koderma to FSD Gumla in February 2007 where he joined his duties on 16/02/2007. Thereafter the fellow workers and members of rival union in FSD Gumla protested and started abusing Sri Rajesh Kumar in month of June and July 2007 resulting him to work impossible. After that Rajesh Kumar submitted representations to Depot Manager and finally to General Manager (Region) vide representation dated 23/08/2007 mentioning therein that his life was endangered and he requested for his transfer for any other depot from FSD, Gumla. In the meantime Sri Rajesh Kumar had also represented through local Advocate to the state government authorities vide representation dated 27/06/2007 for arrangement of security and safety to him. Later on the grievances of the concerned workman was taken up to the FCI Headquarters by the union for ensuring safety of the workman transferring him to Dhanbad or to FSD Chutia Ranchi. Thereafter the management of FCI considered the request of the union and transferred the concerned workman to FSD, Chutia but he was released from the FCI, Gumla on 20/12/2007. The concerned workman reported for duty at FCI, Chutia Ranchi on 22/12/2007 (21/07/2007 for non paid holiday). After that the concerned workman Rajesh Kumar requested to the management Area Manager for release of his salary for the period from 10/07/2007 to 19/12/2007 vide letter dated 02/04/2008 but the Area Manager vide Memorandum dated 29/04/2008 informed him that because of his absence from duty in FSD Gumla his salary was not paid and threatened for disciplinary action. After that the Area Manager Ranchi vide Office Order dated 20/02/2010 imposed a punishment on him postponing his annual increment from January to June because of absence from duties for 163 days in Gumla FSD treating this period as leave without pay. In the meantime the concerned workman had raised an industrial dispute before RLC (C), Ranchi and during the conciliation proceeding the management withheld two annual increments of the workman for the year 2008 and 2009 without showing any cause or reason. After that management of FCI had withheld the wages for the period from 10/07/2007 to 19/12/2007 arbitrarily and for which no disciplinary proceedings were held but on the persuasion, the management had released the increment which were withheld for the year 2008 and 2009 vide Office Order dated 20/02/2010. The management of FCI had not conducted any enquiry about the shifting of date of increment of the concerned workman and he had not been given an opportunity to defend himself, so the action of the management is arbitrary and unfair act.

A prayer has been made to pass an Award in favour of the workman and restore the date of increment from the month of January, to release of salary of 163 days for the period i.e. from 10/07/2006 to 19/12/2006 during which the workman was restrained from discharging work and regularization of the service for the period from 10/07/2007 to 19/12/2007.

5. On the other hand the case of the management of FCI as per written statement is as follows:-

That the instant reference case is misplaced as there exists no bona fide industrial dispute for adjudication and the reference is bad in law as at its core is inter-union rivalry. This reference case is mechanical and one sided and completely illegal and arbitrary and is based on extraneous and irrelevant material contrary to prevalent rules, regulations and guidelines.

The concerned workman namely Rajesh Kumar was working as ancillary labour in FCI, FSD, Gumla and allegation of withholding of annual increments for the years 2008 and 2009 is baseless as these increments have admittedly, been released by the management vide order dated 20/02/2010. The concerned workman namely Rajesh Kumar was on leave for the period 10/07/2007 to 19/12/2007 without proper and valid sanction and as such this period was not spent on duty, so it had to be treated as leave without pay. The concerned workman had not submitted any application for extended long unauthorised leave covering a period of about six months, so as per Certified Standing Orders the date of annual increment was shifted. The concerned workman after joining at Gumla had requested for transfer which was acceded by the management vide Office Order dated 14/12/2007 but he had not applied for any leave and unilaterally stopped working, so his absence continued for as long as much as six months without any grant of sanction of leave. The concerned workman by way of afterthought and to cover up his own latches, had concocted as an entirely false conspiracy theory alleging that the management and the so called rival union were hands in glove in threatening him. In absence of a valid application for leave for the period of about six months when the concerned workman did not work at all had to be treated as leave without pay and as such his service for the period of absence also cannot be regularised.

The management by way of rejoinder has stated that the statement made in Paras- 1 to 3 of statement of claim of union are matters of record and need no specific rebuttal, statement made in Para-4 of statement of claim of union is that the allegations are false, frivolous, motivated and mala fide, statement made in Para-5 of statement of claim of union regarding alleged harassment of Rajesh Kumar are denied, statement made in Para-6 of statement of claim of union that the management was ever informed about the family of the concerned workman having suffered, is

denied, statement made in Para-7 of statement of claim of union are matters of record, statement made in Para-8 of statement of claim of union is denied that postponement of his annual increment from January to June is a punishment and the statement made in Para-9 of statement of claim of union that the concerned workman through the espousing union has raised issues which are not germane to determination of the case.

6. The sponsoring union has filed rejoinder to the written statement in which it has been mentioned that the statement made in Para-1 of the written statement of management is totally irrelevant, the statement made in Para-2 of the written statement of the management is wrong and denied, the statement made in Para-3 of the written statement of the management is totally wrong and vehemently denied, the statement made in Para-4 of the written statement of management is not relevant, the statement made in Para-5, 7, 12, 14, 20, and 23 are matter of records, the statement made in Para-6 of the written statement of management, it has admitted the specific demand regarding withholding of annual increments for the period from 10/07/2007 to 19/12/2007 and refusing of regularization of the period from 10/07/2007 to 19/12/2007, the statement made in Para-8 of the written statement of management are not admitted and denied, the statement made in Para-9 of the written statement of the management is not correct and denied, the statement made in Para-10 of the written statement of management is not correct, the statement made in Para-11 of written statement of management is not correct and denied, the statement made in Para-13, 15, 17 and 22 of the written statement of management is absolutely wrong and denied, the statement made in Para-16 of the written of management is prerogatives of the court, the statement made in Para-18 of the written statement of management is based solely on hearsay, the statement made in Para-19 of the written of management is totally false and fabricated, the statement made in Para-21 of the written of management it has been admitted that management did not proceed for disciplinary action, the statement made in Para-24 of the written statement of management is most unjustified, improper and is illegal and the statement made in Para-25 of the written statement of management regarding direction to the court to give decision in favour of the respondent management which is also abuse of law.

7. The sponsoring union has examined only one witness. He is WW-1, Rajesh Kumar.

The WW-1, Rajesh Kumar has deposed that since 1984 he was working in FCI and in the year 2006 he was transferred from Koderma to Gumla in the month of October but he was not at peace at Gumla after joining. He has also deposed that he was single member in Handling Workers Union whereas other members were putting pressure on him to accept their membership. He has also stated that since 10/07/2007 to 19/12/2007 he was not given any work at Gumla and the members of other unions had restrained him from entering inside the gate of FCI. He has also stated that he was threatened by the members of other unions that he would be done to death and they had also attacked him at his residence. He has further stated that he had informed the Depot Manager and requested him to save his life and property. He has also stated that he had informed the Regional Office Ranchi and his union had also informed the FCI Officers regarding my complaint. He has also stated that he had filed FIR at Gumla Police Station and had filed complaint before the S.D.O., Gumla. He has also stated that he was assaulted by Ajay Kumar and others members of FCI Workers Union. He has also deposed that he was transferred to Ranchi in the month of December 2007 where he had demanded his salary but the Regional Manager had handed over him memorandum no. 262 dated 29/07/2008. He has also stated that the salary for five months was stopped by the management and his increment was also stopped but on filing the case before RLC, Ranchi his increment was restored. He has also deposed that he had not been served any charge-sheet and no enquiry was conducted against him as per his knowledge. He has further stated that he was not given any opportunity to defend himself and he had not been given copy of an enquiry proceeding. He has made request for payment of salary for five months and restoration of date of his increment.

In the cross-examination he has deposed that he was posted at Gumla since 16/02/2007 to 19/12/2007 and during that period he was tortured by others. He has further deposed that at Gumla there were two unions and every workers had to be a member of any union. He has also deposed that police has not taken any action on his FIR. He has denied the suggestion that police had submitted final form after finding the allegation not true. He has also deposed that there is rule in his company that if any worker remained absent from duty his absent period would be treated as leave without pay. He has denied the suggestion that he was absent from the office without any information resulting non payment of his salary.

8. The management has examined only one witness. He is MW-1, Rahul Kumar.

The MW-1, Rahul Kumar has deposed before the Tribunal that at present Rajesh Kumar is posted as Ancillary Labour at FSD Ranchi and he was earlier posted at FCI, Gumla since 2007. He has also stated that the workman Rajesh Kumar was absent from his duty at Gumla since 10/07/2007 to 19/12/2007 and during this period no application was available in the official record for his absence. He has also deposed that in case of absence of workman from duty the said workman is put on leave without pay and in case of leave without pay the date of increment changed as per standing order of FCI. He has also stated that the FCI had fixed the next increment of Rajesh Kumar after granting 163 days of leave without pay. He has proved the office order dated 20/02/2010 by which Area Manager of FCI, Ranchi had granted leave of absence of 163 days to Rajesh Kumar as leave without pay which is marked as Exhibit M-1. He has also proved the office order dated 19/12/2007 regarding transfer of Rajesh Kumar from Gumla to Ranchi which is marked as Exhibit M-2.

In the cross-examination he has deposed that he could not remember the date of joining of Rajesh Kumar at Gumla but Rajesh Kumar was relieved on 14/12/2007. He has also deposed that he had joined FCI in the year 2012 and he was not in service at the time of dispute. He has also deposed that the show cause notice was sent to Rajesh Kumar before he was punished but he could not remember the date of issuance of show cause notice. He has further deposed that no enquiry was conducted on the point of absence of duty of Rajesh Kumar and Rajesh Kumar was not awarded any punishment rather it is the case of leave regularisation. He has also stated that there is nothing in our official record that Rajesh Kumar had not been allowed in the office premises of FCI by the members of other unions. He has also deposed that Rajesh Kumar had not approached the management regarding his difficulties or problem at Gumla and principle of natural justice had been applied in the matter regarding regularisation of absence of leave of Rajesh Kumar. He has also deposed that the office order was issued after four years when the matter of leave regularisation was taken up.

9. The sponsoring has proved the following documents which are marked as:-

Exhibit W-1- Photo Copy of Letter dated 16/02/2007 of Rajesh Kumar addressed to Manager (Depot), FCI, Gumla regarding joining at Gumla.

Exhibit W-2- Photo Copy of Office Order No. IR(4)/RO/JKD/2001/Part-1, dated 10/07/2006 of FCI, Regional Office, 9th Floor, Mahavir Tower, Main Road, Ranchi issued by Chief labour Inspector, General Manager (Area) regarding his posting at Daltonganj.

Exhibit W-3- Photo Copy of Letter dated 18/11/2010 of Area Manager, FCI, District Office, 12-Purulia Road, Ranchi addressed to the General Manger (Region), FCI, R.O, Ranchi regarding forwarding of application of Sri Rajesh Kumar, A/L for transfer from Ranchi to Koderma.

Exhibit W-4- Photo Copy of letter dated 04/02/2009 of Area Manager FCI, Regional Office, 9th Floor, Mahavir Tower, Main Road, Ranchi addressed to The RLC(C), Ranchi regarding submission of comments on Non-Regularisation of service period from 10/07/2007 to 19/12/2007 in respect of Sri Rajesh Kumar, Ancillary Labour of FCI, FSD, Ranchi. (total 2 pages)

Exhibit W-5- Photo Copy of Written Statement filed by FCI, Ranchi dated 17/12/2009 before RLC, Ranchi. (total 4 pages)

Exhibit W-6- Photo Copy of Office Order dated 20/12/2007 issued by Manager (D), FSD/Gumla.

Exhibit W-7- Photo Copy of Letter dated 27/01/2010 of Umesh Kumar Gupta, Joint Secretary, FCI Handling-Workers' Union addressed to RLC(C), MOLE, Ranchi. (total 2 pages)

Exhibit W-8- Photo copy of Office Order dated 05/10/2006 issued by Manger (IR), FCI, Hazaribagh.

Exhibit W-9- Photo Copy of Office Order dated 06/10/2006 issued by Indra Deo Ram, Asstt. Depot Supdt. FCI, FSD, Koderma.

Exhibit W-10- Photo Copy of Letter dated 30/05/2008 of Area Manger, FCI, AO, Ranchi.

Exhibit W-11- Photo Copy of Application dated 05/09/2007 filed before SDM, Gumla.

Exhibit W-12 Series- Photo Copy of Office Order dated 20/07/2006 issued by Area Manager, FCI, Hazaribagh along with cheque dated 05/02/2010 issued in favour of Rajesh Kumar amounting to Rs. 14,879/-.

Exhibit W-13- Photo Copy of Office Order dated 20/02/2010 issued by Area Manager, FCI, Ranchi.

Exhibit W-14- Photo Copy of Office Order dated 14/12/2007 issued by Area Manger(I/C), FCI, Ranchi.

Exhibit W-15- Photo Copy of Office Order dated 05/10/2006 issued by Manager(IR), FCI, Hazaribagh.

Exhibit W-16- Photo Copy of Office Order dated 28/09/2006 issued by Chief Labour Inspector, FCI, Ranchi.

Exhibit W-17 Series- Photo Copy of Identity Card issued by FCI and Pay Slip of Rajesh Kumar, Ancillary Labour, FCI.

Exhibit W-18 Series- Photo Copy of Letter dated 17/07/2007 of Rajesh Kumar, Ancillary Labour, FCI, Gumla addressed to Depot Manager, FCI, Gumla and Regional Manager, FCI, Ranchi regarding permission to work and to protect his life and property.

10. On the other hand the management has proved the following documents in support of its case which are marked as:-

Exhibit M-1- Copy of Office Order dated 20/02/2010 issued by Area Manager. (with objection)

Exhibit M-2- Copy of Office Order dated 20/12/2007 issued by Manager (D), FSD/Gumla.

11. The learned lawyer of sponsoring union has submitted that Rajesh Kumar joined at Gumla as Ancillary Labour on 16/02/2007 and during the month of June and July 2007, the workman of other union created problems to Rajesh Kumar and threatened him of dire consequences resulting lodging of complaint to the Depot Manager, Gumla and Regional Manager, Ranchi and he could not work during the period from 10/07/2007 to 19/12/2007. He has also submitted that several representations were given to the Depot Manager, Regional Manager and higher officers for allowing him to attend his duty but all went in vain. He has also submitted that FIR was lodged against Ajay Kumar at Police Station, Gumla and complain was also filed before the SDO, Gumla. He has further submitted that after transfer of Rajesh Kumar from Gumla at Ranchi, the Area Manager Ranchi vide office order no. 3564, dated 20/02/2010 had issued direction for treating the period from 10/07/2007 to 19/12/2007 as leave without pay and extending his annual increment. He has also submitted that the concerned workman was given a memorandum no. 262, dated 29/04/2008 for his unauthorized absence and asked him to submit explanation within 7 days though he was already released from Gumla. He has further submitted that the concerned workman had replied on 07/05/2008 regarding the charges levelled against him and the management without giving any opportunity of hearing had passed Ex-parte order for treating the period of his absence as leave without pay and holding up six months increment. He has further argued that the management had violated the provisions of certified standing order in withholding the increment and predictive on unauthorized absence as it comes under measure punishment. He has also submitted that no charge-sheet had been issued against the workman and no enquiry had been conducted and shifting of date of increment and treating of period from 10/07/2007 to 19/12/2007 as leave without pay is illegal and unjustified.

12. The learned lawyer of management has submitted before the Tribunal that the reference regarding withholding of two increments for the years 2008 and 2009 had been released by the management vide office order dated 20/02/2010, so it is not a matter in dispute. He has also submitted that the concerned workman namely Rajesh Kumar had remained absent from 10/07/2007 to 19/12/2007 without any information and knowledge of the management, so this period was treated as leave without pay. He has also argued that there is a clear provision in the Certified standing order that if any workman is on L.W.P. in the proceeding 12 months, the date of annual increments will be advanced to no. of L.W.P. period, so the date of increment of workman had been shifted to from January to June. He has also submitted that the concerned workman was absent without any information to the management and the ground of absence mentioned here is totally false and fabricated. He has also submitted that the concerned workman has failed to prove that he was prevented from attending duty. He has further submitted that considering the period of unauthorized leave as LWP in service record itself means that the leave period/service has been regularised by marking the concerned as "LWP" which is not at all punishment or penalty. He has also submitted that the concerned workman is not entitled for payment of wages from 10/07/2007 to 19/12/2007.

13. Now, in this reference case the following points are required to be decided:-

- (i) Whether the action of the management of FCI, Ranchi regarding withholding of annual increments due on 2008 & 2009 is legal and justified?
- (ii) Whether shifting of month of annual increment from January to June is also legal and justified?
- (iii) Whether denying regularization of services with regard to payment of wages for the period from 10/07/2007 to 19/12/2007? are legal and justified?

FINDINGS

14. At the outset of discussion it is required to mention here that it is an admitted fact that the concerned workman namely Rajesh Kumar was an employee of FCI and he was initially posted at Koderma as departmental ancillary labour at FCI, FSD, Koderma and in the month of February he was transferred from Koderma to Gumla where he joined duty on 16/02/2007.

15. The first point of consideration in this case whether the management had withheld two increment for the year 2007 & 2008 of the concerned workman.

The management in his written statement has admitted that the two increments for the year 2008 and 2009 have been released to the concerned workman vide its office order dated 20/02/2010.(Exhibit M-1)

Further, the WW-1 in his evidence before the Tribunal has also admitted that his two increments have restored.

Moreover the Exhibit M-1 shows that the increment for the year 2008 & 2009 had been paid to Rajesh Kumar.

Now, the management had released two increments for the year 2007 & 2008 of the concerned workman, so the Tribunal finds that there is no necessity to discuss this issue in details.

16. The second point of consideration in this reference case is whether the shifting of month of annual increment from January to June is legal or justified?

In this regard it is required to mention here that in the written statement of the sponsoring union it has been categorically mentioned that the date of annual increment have been shifted from January to June.

On the other hand the management in its reply has stated that since the concerned workman Rajesh Kumar was on leave without pay on 10/07/2007 to 19/12/2007, so as per rule of Certified Standing Order his date of annual increment has been advanced.

At this stage it is relevant to mention here that WW-1, Rajesh Kumar in his evidence has categorically stated that no charge-sheet was handed over to him and no enquiry was conducted against him. He has also deposed that he has not been given any opportunity to defend himself. Further the MW-1 has admitted in his evidence that no enquiry was conducted by the corporation in the matter of leave of absence of Rajesh Kumar.

Now, it is required to mention here that without conducting any enquiry and without giving any opportunity to the workman to defend himself, his date of increment has been shifted which amounts to punishment as per 16 2(c) (i) of standing order of FCI.

Hence, the principle of natural justice has not been followed in the matter of advancement of date of annual increment of the concerned workman.

In view of such fact the Tribunal finds that the action of the management on the point of shifting of the month of annual increment of the concerned workman from January to June is not legal and justified.

17. The third point of consideration in this case is whether the action of denying regularisation of services with payment of wages from the period from 10/07/2007 to 19/12/2007 is legal and justified?

18. It has been categorically mentioned in the written statement of the sponsoring union that the management had imposed a punishment of not paying wages for 163 days i.e. 10/07/2007 to 19/12/2007 and his service had not been regularized for that period.

It has been also mentioned in the written statement of the sponsoring union that after joining of the concerned workman at Gumla he was harassed by the members of the other unions and in this regard he has made several representations before the head office for his security and after his transfer from Gumla to Ranchi he joined there on 20/12/2007.

19. The management in his written statement has categorically stated that the concerned workman was absent from his duty without any valid application for leave for period of six months and during that period the concerned workman did not discharge any work at all, so this period was treated as leave without pay.

20. In this regard WW-1, Rajesh Kumar has also in his evidence has stated that his service for the period from 10/07/2007 to 19/12/2007 has not been regularised. He has deposed that his salary for five months has not been paid to him.

21. After going through the Exhibit W-18 series, it appears that the concerned workman had submitted an application to Depot Manager, Gumla on 17/07/2007 for allowing him to discharge his duty and providing security to him and the same day he had also written a letter to Regional Manager, FCI, Ranchi regarding restraining him from discharging his work by Ajay Kumar. Further Exhibit W-11 shows that the concerned workman had filed an application before S.D.O. in M.P.66/07 regarding non-submission of report by police station in the matter of proceeding u/s 107 of Cr. P.C.

22. Now, from the above discussion it is quite apparent that concerned workman had submitted one application to Depot Manager Gumla and other application to Regional Manager FCI, Ranchi on 17/07/2007, so the statement that the concerned workman had submitted several representation to Head Office in this regard is not being substantiated.

Moreover, the Exhibit M-2 shows that the concerned workman was absent from duty since 10/07/2007 to 19/12/2007 without any application of leave.

Further, it does not seem probable that mere on the threatening of rival union, an employee will not attend the office for five months.

23. Now it is an admitted fact that the concerned workman had not discharged any work from 10/07/2007 to 19/12/2007 (total 163 days) and he was absent from 10/07/2007 to 19/12/2007 without any application of leave but his joining had been accepted by the management, so the leave period has been regularised.

24. In view of such fact that by accepting the joining of the concerned workman without any leave application means that his service has been regularised by the management, so no further discussion is required on this point.

Further, the concerned workman had not discharged any work from 10/07/2007 to 19/12/2007 (total 163 days), so denying the payment of wages for period from 10/07/2007 to 19/12/2007 of the concerned workman is legal and justified.

25. After considering all the facts and circumstances of the case the Tribunal comes to the following conclusion:-
- (i) That since the management had released the annual increment due to the workman for the period from 2008 and 2009, so this issue has been settled and no direction is required to be passed.
 - (ii) Further the action of the management of shifting of month of annual increment from January to June is not legal and justified.
- Hence, the concerned workman is entitled for restoration of his annual increment from June to January every year, since the first order of shifting month of annual increment.
- (iii)(a) The acceptance of joining report of the concerned workman without any leave application for the period from 10/07/2007 to 19/12/2007 shows regularisation of service by the management. Hence the services of the workman has been regularised and no direction is required to be passed.
 - (iii)(b) The concerned workman had not done any work or discharged his duty from 10/07/2007 to 19/12/2007 and he was absent from duty without any application of leave, so he is not entitled for any payment of wages during that period.

This is the Award of this Tribunal.

Dictated and Corrected by me.

DINESH KUMAR SINGH, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2022

का.आ. 1013.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स एरकॉन इंटरनेशनल लिमिटेड, साकेत, नई दिल्ली; मेसर्स सीएमएम इन्फ्रा टेकर लिमिटेड (सूर्य इंटर्रा), गुडगांव, (हरियाणा), के प्रबंधन के संबद्ध नियोजकों और श्री चंद्रपाल सिंह, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली पंचाट(संदर्भ संख्या 62/2022) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 14.10.2022 को प्राप्त हुआ था।

[सं. एल-42011/186/2021-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th October, 2022

S.O. 1013.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 62/2022) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to M/s ERCON International Ltd., Saket, New Delhi.; M/s CMM Infra techer Ltd. (Surya Intra), Gurgaon, (Haryana) and Shri Chandernal Singh, worker which was received along with soft copy of the award by the Central Government on 14.10.2022.

[No. L-42011/186/2021IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty

ID.NO.62/2022

Shri Chanderpal Singh S/o Sh. Pal Singh,
Through Delhi Karamchari Sangh (Regd.)
Main Office-W4, In front of Kalkaji bus Depo,
Govindpuri, New Delhi-110019.

...Workman

Versus

1. M/s. ERCON International Ltd.,
C-4, District Centre, Saket,
New Delhi-110017.
2. M/s. CMM Infra techer Ltd. (Surya Infra)
Sector-32, Plot No. 16,
Gurgaon, (Haryana) -122001.

... Managements

AWARD

In the present case, a reference was received from the appropriate Government vide reference No. L-42011/186/2021(IR(DU)) dated 7.2.2022 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

“Whether action of the management of Ms/ CMM Infra Techer Limited (Surya Infra), Gurugram, a contractor under M/s ERCON International Ltd., New Delhi in terminating the services of Shri Pal Singh w.e.f 30.06.2021 as raised by Delhi Karamchari Sangh(Regd.), New Delhi vide letter dated 27.12.2018 is proper, legal and justified? If not, to what relief the disputant worker is entitled and what other directions are necessary in this respect?”

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.
3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.
4. Since the workman has neither put his appearance nor has he led any evidence so as to prove his cause against the managements, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Date: 5th August, 2022

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2022

का.आ. 1014.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आयुक्त, उत्तरी दिल्ली नगर निगम, नई दिल्ली के प्रबंधन के संबद्ध नियोजकों और श्री राज कुमार, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली पंचाट(संदर्भ संख्या 161/2020) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 14.10.2022 को प्राप्त हुआ था।

[सं. एल-42012/20/2020-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th October, 2022

S.O. 1014.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 161/2020) of the Central Government Industrial Tribunal-cum-Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Commissioner, North Delhi Municipal Corporation, New Delhi and Shri Raj Kumar, worker which was received along with soft copy of the award by the Central Government on 14.10.2022.

[No. L-42012/20/2020-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty

ID. NO.161/2020

Shri Raj Kumar S/o Sh. Ram Phal,
Rept, by Delhi Municipal Mazdoor Trade Union,
B-40, 1st floor, MCD flats Buleward Road Tis Hazari, Delhi-110054

... Workman

Versus

The Commissioner,
North Delhi Municipal Corporation,
S.P Mukherjee, Civic Centre, J. L Nehru Marg,
New Delhi-110002.

... Management

AWARD

In the present case, a reference was received from the appropriate Government vide reference No. L-42012/20/2020(IR(DU)) dated 15.09.2020 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

“Whether the demand of Sh. Raj Kumar S/o Shri Ram Phal through Delhi Municipal Mazdoor Trade Union to the management of North Delhi Municipal Corporation for regularization in service and salary in the regular pay-scale from the date of his initial appointment is proper, legal and justified ? If yes, what reliefs the worker are entitled to and what other directions, if any are necessary in this regard?”

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the management. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Date: 5th August, 2022

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2022

का.आ. 1015.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केरला ग्रामीण बैंक को प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एर्नाकुलम के पंचाट (संदर्भ संख्या 40/2015) को प्रकाशित करती है।

[सं. एल-12011/59/2015-आई आर (बी-1)]

ए. के. यादव, अवर सचिव

New Delhi, the 19th October, 2022

S.O. 1015.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Ernakulam as shown in the Annexure, in the industrial dispute between the management of Kerala Gramin Bank and their workmen.

[No. L-12011/59/2015– IR(B-1)]

A. K. YADAV, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULAM

Present: Shri. V.Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Thursday the 21st day of April 2022, 1 Vaisakha 1944)

ID No.40/2015

Workman/Union : The General Secretary
All Kerala Gramin Bank
Employees Union
V. S. Bhakther Memorial
V. K. Complex, Fort Road
Kannur – 670001
By Adv.C. Anilkumar

Management : The Chairman
Kerala Gramin Bank
P. B. No.10, Head Office
Kerala Gramin Bank Towers
A. K. Road, Uphill
Malappuram – 676505
By Adv. Ashok B. Shenoy

This case coming up for final hearing on 11.11.2021 and this Industrial Tribunal-cum-Labour Court on 21.04.2022 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-12011/59/2015-IR(B-1) dated 16.09.2015 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

“Whether the unilateral action of the Kerala Gramin Bank, denying special allowance to Single Window Operator “B” is justified ? If not, what relief the workman/union is entitled for ? ”

3. The Union filed claim statement. According to the Union, the Management Bank is formed by amalgamating North Malabar Gramin Bank and South Malabar Garmin Bank. Various Bipartite Settlements governing the award staff of the banking industry is applicable to the Management. The 9th Bipartite Settlement was adopted by and was made applicable to the Management Bank in 2010. As per the 9th Bipartite Settlement, clause 11(II) in part A(a) of Schedule II to the Bipartite Settlement, 27 special pay posts were integrated into one post called Single Window Operator-B (SWO-B) with special pay as mentioned in part B of Schedule II w.e.f. 01.05.2010. Single Window Operator-B post is vested with various duties and cash transactions and the post includes computer operator,

data entry operator, head clerk, stenographer, telephone operator etc. This special pay as per the 9th Bipartite Settlement for Single Window Operator-B was extended to the clerical staff of North Malabar Gramin Bank. The work available in the administrative offices of the Management Bank were covered by the posts shown in part A(a) of Schedule II were receiving special pay. Consequent on 9th Bipartite Settlement, they were re-designed as Single Window Operator-B w.e.f. 01.05.2010. While so, the Management issued a Circular no.49/2013 dt.10.12.2013 depriving the 16 clerical staff working in administrative offices, the benefits of sub clause (ii) read with sub clause(iii) of clause 11 of the 9th Bipartite Settlement. By the above Circular, the Management issued certain guidelines taking away the benefits of special pay given to the Single Window Operator-B for staff working in the administrative offices of the Management Bank. Circular no.49/2013 is issued against the terms of 9th Bipartite Settlement. The Management did not enforce the circular immediately. After an year, the Management enforced the provisions in the circular retrospectively. By issuing and implementing Circular no.49/2013, the Management had changed the service conditions of the 16 staff in clerical cadre working in the administrative offices of the Management Bank. The change was effected in total violation of Sec 9A of ID Act. The Management did not follow the mandatory procedure prescribed U/s 9A of the Industrial Disputes Act. The loss due to the enforcement of Circular no.49/2013 is about Rs.1230/- per month. This loss get increased from time to time in accordance with the change in the DA. The erstwhile 16 clerical staff drawing special allowance prior to 9th Bipartite Settlement as shown in Schedule II A(a) working in administrative offices of the Management Bank are entitled to get special pay attached to Single Window Operator-B as the work they are doing in the administrative office attracted special pay even prior to the 9th Bipartite Settlement.

4. The Management filed counter denying the above allegations. The dispute raised by the Union is not an industrial dispute under Industrial Disputes Act, 1947, as the trade union which raised the industrial dispute has not substantial membership of workmen employed in the Management Bank. Therefore the Union cannot raise the industrial dispute or espouse it as an industrial dispute. This is particularly so since the trade union having substantial membership of workmen in the Management Bank which is entitled to espouse a cause as an industrial dispute has not raised the subject dispute. The Union had not shown its authority and right to represent the workmen of the Management Bank or to espouse and raise an industrial dispute. It is incorrect to say that as per provisions in 9th Bipartite Settlement, 27 special pay posts were integrated into one post called Single Window Operator-B w.e.f. 01.05.2010. As per the Bipartite Settlement, special pay is only a special allowance paid to workmen employed either in the clerical or subordinate cadre for regular performance of certain special functions in addition to their general duties in the clerical or subordinate cadre. The special functions enumerated are categorized as posts. Special pay is a functional allowance payable only to particular workman performing particular functions. The special pay is available only so long as they performed such particular functions as part of their normal and regular duties. No employee is having a permanent right to claim it forever. The 9th Bipartite Settlement nullified the jobs mentioned in Part A(a) of Schedule II of Bipartite Settlement to be attracting special pay which is attracted until then. There is no integration of 27 alleged posts into Single Window Operator-B. The claim of the Union that special pay of Single Window Operator-B was extended to the clerical staff of North Malabar Gramin Bank is not correct. Further the claim of the Union that the work available in the administrative office of the Management Bank was covered by posts shown in part A(a) of Schedule II of the 9th Bipartite Settlement and were receiving special pay is also not correct. The duties of clerical workmen employed in administrative office of the Regional Rural Banks including Management Bank who are designated as Office Assistant, do not involve performance of any of the duties attracting special pay as specified in Part A(a) of Schedule II of 9th Bipartite Settlement and therefore such clerical workmen in administrative office are not entitled to or have not received any special pay without performance of such duties attracting special pay. The clerical workman employed in administrative office of the Management Bank being workmen not performing any of the duties or jobs attracting special pay either that of Single Window Operator-B or any other jobs, they are not governed by sub clause (ii) of Clause 11 of 9th Bipartite Settlement and not re-designated therein. Therefore they are not entitled to any special pay or merger of Rs.1000/- with basic pay. Circular no 49/2013 dt.10.12.2013 is issued by the Management in terms of and in tune with the provisions contained in the Bipartite settlement including 9th Bipartite settlement. It is not correct to say that the Management enforced the above said circular retrospectively. The Management has not in any way changed the conditions of service of the 16 clerical workmen attracting the provisions of Sec 9A of the Industrial Disputes Act or warranting issue of notice thereunder. The 16 clerical workmen referred to by the Union are not entitled to special pay of Single Window Operator-B, as their works do not attract performance of any of the jobs or duties attracting special pay of Single Window Operator-B nor did attract performance of any of the jobs or duties attracting any special pay, earlier.

5. The Union filed rejoinder denying the claims of the Management in the written statement. The Union which raised the industrial dispute is having membership of substantial members of workmen under the Management. All India Bank Employees Association is the association which represent more than 85% of bank employees in India. All Kerala Gramin Bank Employees Union is affiliated to All India Bank Employees Association. Hence the Union has the competence to raise an industrial dispute. As per Para 11(ii) of the memorandum of settlement dt.27.04.2010, it is agreed that w.e.f. 01.05.2010 posts attracting special pay in clerical cadre as mentioned in Part A(a) of Schedule II of that agreement stand modified and members of clerical staff performing the said duties shall be treated as those assigned with the duties of Single Window Operator-B. The workmen who are affected by Circular no.49/2013

dt.10.12.2013 are doing the work covered in Part A(a) of Schedule II and were getting special allowance earlier. By virtue of Para 11(ii) of the memorandum of settlement dt.27.04.2010, the clerical staff who are doing 27 different types of work were treated as those assigned with duties of Single Window Operator-B and special allowance applicable to Single Window Operator-B was uniformly applied to all 27 categories of work covered under Part A(a) of Schedule II. Pursuant to memorandum of settlement dt.27.04.2010 all the clerical staff including those working in the Head Office of North Malabar Gramin Bank was receiving special pay as provided in Part B to Schedule III of the settlement. Kerala Gramin Bank is a Regional Rural Bank formed on 08.07.2013 under Sub Sec 1 of Sec 3 of RRB Act, 1976. The Bank was formed by amalgamating two RRBs of Kerala, namely South Malabar Gramin Bank and North Malabar Gramin Bank by protecting the wages and allowances prevailing in the Banks. The special pay of Single Window Operator-B was extended to the clerks working in the administrative office till the amalgamation and after the amalgamation, the same allowance was extended to clerks in administration offices upto 30.11.2014. After amalgamation of the Banks, the Management took a stand that those workmen in administrative office are not entitled for special pay and Circular no.49/2013 was issued without hearing the affected parties. The Circular was implemented in December 2014 retrospectively. Consequent to implementation of Circular no.49/2013, the clerical staff working in administrative office are losing about 1084/- per month. The special pay for Single Window Operator-B is a part of salary which is paid by debiting establishment head. By reducing salary once paid to a section of clerks in a Bank on the ground that they are working in administrative office is an act of denial of justice and discrimination to 16 clerks. As the special pay is reckoned for determining gratuity and other terminal benefits, the loss sustained by the workmen in the long run would be much higher. The Management deprived the benefits of sub clause of v(a) of Para 11 of 9th Bipartite Settlement to 16 clerical workers who are working in the administrative office of the Management by issuing and implementing Circular no.49/2013. The Management has changed the service conditions of 16 clerical staff working in the administrative office of the Management. Further denial of special pay to 16 clerical staff is in violation of Bipartite Settlement dt.27.04.2010. The clerical staff working in the administrative office of the Management Bank are entitled to get special pay as provided in Part B to Schedule III of the Bipartite settlement dt.27.04.2010.

6. After completion of pleadings, the Union examined WW1 and marked Exbts.W1 to W6. The Management examined MW1.

7. The issues to be decided in this dispute are ;

1. Whether the industrial dispute is maintainable ?
2. Whether the denial of special allowance to Single Window Operator-B is justified ?
3. Relief and cost ?

8. Issue No.1

The learned Counsel for the Management took a contention that the Union which raised this dispute is a trade union having no substantial membership of workmen employed in the Management Bank and therefore they cannot raise an industrial dispute or espouse it as an industrial dispute. According to him, the trade union having substantial membership of workmen employed in the Management Bank representing the workmen has not raised such an industrial dispute and therefore the present industrial dispute is not legal or tenable and therefore the industrial dispute is not maintainable. According to the learned Counsel for the Union, All Kerala Gamin Bank Employees Union is affiliated to All India Bank Employees Association which represent more than 85% of the Bank employees in India, and negotiated and signed settlement of wages as well as service conditions of the Bank employees in the Banking sector with Indian Bank Association through Bipartite Settlement. According to him, the Union is therefore competent to raise an industrial dispute and participate in the conciliation proceedings. According to the learned Counsel for the Management, the Management Bank is having an employment strength in the clerical and subordinate cadre of around 1500 employees and the present Union is only having a membership of 143 members which cannot in any way be classified as a substantial membership for raising an industrial dispute.

9. There is nothing in the Industrial Disputes Act requiring that the dispute or difference should be raised by all workmen of the industry or even by a majority of them. It is enough, if the contrary is between the employer on one side and the workmen on the other side. If the controversy affects or will affect the interest of the workmen as a class, the law envisages that in the interest of the industrial peace it should be examined and decided in any one of the modes provided by it. No hard and fast rule can be laid down in such circumstances to decide when and by how many workmen, an industrial dispute can be raised within the meaning of the Act or whether a minority Union or even unrecognized Union can raise an industrial dispute. The learned Counsel for the Union relied on the decisions of the Hon'ble Supreme Court in **Indian Oxygen Ltd Vs The workmen employed by M/s.Indian Oxygen Ltd**, 1979 KHC 603. The Hon'ble Supreme Court held that "It is enough if there is a potential cause of disharmony which is likely to endanger industrial peace, and a substantial number of workmen raise a dispute about it, for then, it is permissible to take the view that it is an industrial dispute within the meaning of clause 1 of Sec 2 of the U.P. Act and to refer it for adjudication to a Tribunal". In **The workmen of Dharampal Premchand Vs Dharampal Premchand**, 1965 1 LLJ 668 (SC) the Hon'ble Supreme Court held that a Union may validly raise a dispute

though it may be a minority Union of the workmen in the establishment. The Hon'ble Supreme Court held that a dispute of 18 workmen could validly be espoused by the Union in which only those 18 workmen of the employer were members. The Division Bench of the Hon'ble High Court of Calcutta in **Reckitt and Coleman of India Ltd Vs 5th IT**, 1980 LAB IC 92 (RCIL)(DB) held that a dispute relating to the service conditions of 12 car drivers of a company employing about 1000 workers, was validly raised by a Union in which no other workman than the 18 drivers employed by the company were members. In the present case the Union is espousing the cause of 16 clerical staff working in the administrative office of the Management. In view of the law laid down by the Hon'ble Supreme Court as well as various High Courts, I am of the considered view that the industrial dispute is maintainable.

Hence the issue is decided in favour of the Union and against the Management.

10. Issue no.2

According to the learned Counsel for the Management, the reference is with regard to withdrawal of special allowance to Single Window Operator-B and it has got no reference to the clerical staff working in the administrative office of the Management Bank. According to the learned Counsel for the Union, the claim is confined to 16 clerical staff who were drawing special allowance prior to 9th Bipartite Settlement as shown in A(a) who were working in the administrative office of the Management Bank. According to him, all the 16 clerical staff working in the administrative office were getting the special pay attached to Single Window Operator-B and are entitled to continue to receive the special pay attached to Single Window Operator-B. It is true that there is a slight difference in the reference and the claim filed by the Union. The difference is with regard to the persons who are claiming the benefit of special pay. In this industrial dispute, according to the learned Counsel for the Union, the claim is confined to the 16 clerical staff who are entitled to continue to receive special pay attached to Single Window Operator-B. The inaccuracy of language employed in the order of reference does not always make any difference to the jurisdiction of the Tribunal with the reference and adjudicate a point. In **Agra Electric Supply Company Ltd Vs Workmen**, 1983 1 LLJ 304 SC the Hon'ble Supreme Court held that industrial jurisprudence is an alloy of law and social justice and one cannot be too pedantic in construing terms of reference respecting a dispute for industrial adjudication. The order of reference cannot be construed too technically or in a pedantic manner, but the same shall be interpreted fairly and reasonably. The Hon'ble Supreme Court of India in **Express News Papers Ltd Vs Workmen**, AIR 1963 SC 569 held that the Tribunals not only has the power, but a duty is cast on it to find out what was the real dispute which was referred to it and to decide and not throw it out on a mere technicality. In **Delhi Cloth and General Mills Company Ltd Vs Workmen**, AIR 1967 SC 469 the Hon'ble Supreme Court held that "The Tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out therefrom the various points about which the parties were at variance leading to the trouble". From the law as laid down by the Apex Court, it is clear that the order of reference along with the pleadings shall be looked into arrive at the correct dispute between the Management and the Unions.

11. According to the learned Counsel for the Union, as per 9th Bipartite Settlement, 27 special pay posts were merged and integrated into one post of Single Window Operator-B as mentioned in part B of Schedule II w.e.f. 01.05.2010. According to him, the clerical staff posted in the administrative office of the Management Bank were receiving special pay. The learned Counsel for the Management on the other hand pointed out that the claim that 27 special pay posts were integrated into one post Single Window Operator-B w.e.f. 01.05.2010 is not correct. However as per Para 11 (iv) it is stated that "With effect from 01.05.2010 clerical staff who are drawing special pay for posts mentioned in Part A(a) in Schedule II to this settlement as on 30.04.2010 shall continue to discharge the special pay duties as hitherto and as provided in schedule 3 of Bipartite settlement dt.02.06.2005. In addition, upon their re-designation as Single Window Operator-B w.e.f. 01.05.2010 as provided in clause 2 above, they shall be liable to discharge the duties of Single Window Operator-B". As per clause B "With effect from 01.05.2010, posts attracting special pay in clerical cadre as mentioned in part A(a) of Schedule II to this agreement shall stand modified and members of clerical staff performing the said duties shall be treated as those assigned with the duties of Single Window Operator-B". In schedule II to part A(a) 27 categories of posts are classified as Single Window Operator-B and in the foot note it is specifically mentioned that "With effect from w.e.f. 01.05.2010 all the above posts attracting special pay stand modified and re-designated as Single Window Operator-B". Hence it is clear that the clerical staff who were doing 27 different types of work were treated as those assigned with duties of Single Window Operator-B and special allowance applicable to Single Window Operator-B was given to 27 categories of work covered by part A(a) of Schedule II.

12. The learned Counsel for the Union argued that all the 16 clerical staff working in administrative offices are also entitled for the special pay and they were also being paid the special pay. The learned Counsel for the Management denied the same and stated that the clerical staff working in the administrative offices are not entitled for special pay. On a perusal of the Exbt.W2 Circular dt.04.09.2010, it is indicated that "In administrative offices, the duties of special pay carrying posts shall be entrusted to the clerical staff based on the administrative exigencies to ensure effective functioning of all sections/portfolios being handled by the respective officers/departments. Such clerical staff as and when shifted/transferred to another branch shall be liable to perform the duties as applicable to

Single Window Operator-B in addition to their normal duties in clerical cadre". It is clear from the above that the clerical staff posts in the administrative offices were also entitled to the special pay attached to Single Window Operator-B. The Union also produced Exbt.W4 salary report of Smt.Thara Bai M, Office Assistant working in Head Office, Kannur for the month of 11/2014 to show that the employee was being paid Single Window Operator-B allowance. The Union also produced the salary report of the same employee for the month of 12/2014 and 01/2015, Exbt.W5 and W6 to prove that the special pay was stopped w.e.f. 12/2014. According to the learned Counsel for the Union, the allowance was stopped in view of Exbt.W3 Circular no.49/2013 dt.10.12.2013 which in Para 6 clearly states that "Single Window Operator allowance is not admissible for staff members at administrative office/service branches". According to the Counsel, though the Circular was issued on 10.12.2013, the special pay was withdrawn from 12/2014. The Management witness MW1 in his oral evidence also admitted that as per Exbt.W4, the Office Assistant in administrative offices were also being paid the special allowance available to a Single Window Operator-B. He further confirmed that as per Exbt.W5 and W6, the special allowance was not paid to the employees w.e.f. 12/2014. He further admitted during cross examination that this special allowance to the clerical staff working in administrative offices was withdrawn as per Exbt.W3 circular no.49/2013 dt.10.12.2013.

13. Hence it is clear from the above evidence that the Office Assistants working in administrative office of the Management Bank were being paid the special allowances of Single Window Operator-B till 11/2014 and the same was withdrawn vide Exbt.W3 Circular no.49/2013 dt.10.12.2013 from 12/2014.

14. The learned Counsel for the Union pointed out that there is a loss of more than 1000/- rupees per month for the employees in view of the withdrawal of the special allowance and will keep on increasing in the days to come. The Management witness MW1 also in his cross examination admitted that there will be loss on the side of the clerical staff working in administrative offices in view of the withdrawal of the special allowance. Hence the question is whether there is any violation of the provisions U/s 9A of the Industrial Disputes Act. According to the learned Counsel for the Union, there is a clear violation in view of the fact that there is a change in service conditions as per Clause 3 of the 4th Schedule of the Industrial Disputes Act. In **Management of Indian Oil Ltd Vs Workmen**, 1975 2 LLJ 319 (SC) the Hon'ble Supreme Court considered whether the withdrawal of the compensatory allowance paid to its workmen on the basis of similar allowance introduced by the Central Govt for its employees, posted in the State of Assam, requires compliance U/s 9A of the Industrial Disputes Act when the same is withdrawn. The Hon'ble Supreme Court held that the compensatory allowance was an implied condition of service to attract the mandatory provisions of Sec 9A. In **Lakshmi Vilas Bank Employees Union Vs Lakshmi Vilas Bank Ltd**, the issue involved was withdrawing special allowance paid to the machine operators and punch operators at its Data Processing Center at the rate of Rs.152/- and Rs.87/- per month respectively. Consequent upon outsourcing the job, the Bank withdrew payment of the said special allowance and transferred the operators to other departments. The Hon'ble High Court of Madras held that it was mandatory for the Bank to give 21 days notice to the workmen concerned which duty it did not fulfill and hence the discontinuance of the special allowance was not correct and was therefore in violation of Sec 9A of the ID Act.

15. In the present case as already pointed out the clerical staff in administrative offices were being paid special allowance of Single Window Operator-B even after the Exbt.W1 Bipartite Settlement and the same was withdrawn vide Exbt.W3 Circular no.49/2013 dt.10.12.2013. It is also clearly established that there is monetary loss to the concerned employees due to the withdrawal of the allowance. Hence the withdrawal of the allowance comes within item no.3 of 4th Schedule and therefore the procedure contemplated U/s 9A of the ID Act is attracted. The Management has no case that they followed the procedure as per Sec 9A and therefore the denial of special pay to 16 Office Assistants working in administrative office is not legal and is in violation of Sec 9A of the ID Act.

16. Issue No.3

In view of the findings in issue no.1 and 2, the clerical staff working in administrative office of the Management Bank are entitled for the special pay and the Management is directed to restore the same to the Office Assistants working in the administrative office of the Management.

17. Hence an award is passed holding that the denial of special pay to 16 clerical staff working in administrative office of the Management Bank is not justified. They are entitled for special allowance being paid to the Single Window Operator-B.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 21st day of April, 2022.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX**Witness for the Workman:-**

WW1 - Sri.Upendran P., dt.09.12.2019

Witness for the Management:-

MW1 - Sri.Prabhakaran V. M., dt.05.07.2021

Exhibits for the Workman:-

W1 - Relevant portion of the Bipartite settlement dt.27.04.2010 between IBA and Unions

W2 - Copy of Circular No.40/2010 dt.04.09.2010 issued by the Management

W3 - Copy of Circular No.49/2013 dt.10.12.2013 issued by the Management

W4 - Copy of salary slip of Smt.Thara Bai M for November 2014

W5 - Copy of salary slip of Smt.Thara Bai M for December 2014

W6 - Copy of salary slip of Smt.Thara Bai M for January 2015

Exhibits for the Management:- Nil

नई दिल्ली, 19 अक्टूबर, 2022

का.आ. 1016.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चिकित्सा अधीक्षक, ईएसआई अस्पताल बसैदरापुर, नई दिल्ली; मेसर्स वायुदूत सुरक्षा सेवाएं, ईएसआई अस्पताल बसैदरापुर, नई दिल्ली के प्रबंधन के संबद्ध नियोजकों और श्री सुरेश कुमार, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली पंचाट के (संदर्भ सं. 152/2020) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 14.10.2022 को प्राप्त हुआ था।

[सं. एल-42011/90/2020-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th October, 2022

S.O. 1016.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 152/2020) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Medical Superintendent, ESI Hospital Basaidarapur, New Delhi; M/s. Vayuddot Security Services, ESI Hospital Basaidarapur, New Delhi and Shri Suresh Kumar, worker which was received along with soft copy of the award by the Central Government on 14.10.2022.

[No. L-42011/90/2020-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—CUM—LABOUR COURT-II, NEW DELHI****Present: SMT. PRANITA MOHANTY****ID. NO. 152/2020**

Shri Suresh Kumar, S/o Sh. Gopi Ram,
Through, Bhartiya Engineering & General Mazdoor Union,
Bhrat Mill Charkhi Gate, Plot no. 1, Near D-Block Karampura,
New Delhi-110015.

... Workman

Versus

1. Medical Superintendent,
ESI Hospital Basaidarapur,
New Delhi-110015.
2. M/s. Vayuddot Security Services,
ESI Hospital Basaidarapur, New Delhi-110015

.... Managements

AWARD

In the present case, a reference was received from the appropriate Government vide reference no. L-42011/90/2020(IR(DU)) dated 22.09.2020 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

“Whether the services of the worker Sh. Suresh Kumar S/o Sh. Gopi Ram, represented through Bhartiya Engineering and General Mazdoor Union have been terminated w.e.f 02.06.2017 by the management M/s Vayuddot Security Services (Contractor) under ESI Hospital Basaidarapur illegally and / or unjustifiably and if yes, to what relief is he entitled and what directions if any, are necessary in this regard?”

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put his appearance nor has he led any evidence so as to prove his cause against the managements, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2022

का.आ. 1017.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सोलर एनर्जी कॉर्पोरेशन ऑफ इंडिया लिमिटेड, साकेत, नई दिल्ली; मेसर्स सिक्योरिटी सॉल्यूशंस एंड मैनुपावर सर्विसेज, नोएडा, उत्तर प्रदेश के प्रबंधन के संबद्ध नियोजकों और श्री शिव लगन, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली पंचाट(संदर्भ संख्या 154/2020) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 14.10.2022 को प्राप्त हुआ था।

[सं. एल -42011/94/2020-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th October, 2022

S.O. 1017.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 154/2020) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to M/s Solar Energy Corporation of India Ltd. ,Saket, New Delhi; M/s Security Solutions and Manpower Services , Noida, Uttar Pradesh and Shri Shiv Lagan, worker which was received along with soft copy of the award by the Central Government on 14.10.2022.

[No. L-42011/94/2020 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—CUM—LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty

ID.NO.154/2020

Shri Shiv Lagan S/o Sh. Rajender Thakur,
Rept. By Engineering workers Lal Jhanda Union,
Regd, 47, Ami Chand Khand, Giri Nagar, Kalkaji,
New Delhi-110019.

.... Workman

Versus

1. M/s Solar Energy Corporation of India Ltd.
D-3, 1st Floor, Wing-A, Religare Building
District Center Saket, New Delhi-110017.

2. M/s Security Solutions and Manpower Services
1783, Sector 29, Noida, Uttar Pradesh-201301.

.... Managements

AWARD

In the present case, a reference was received from the appropriate Government vide reference no. L-42011/94/2020 IR(DU) dated 22.09.2020 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

“Whether the services of Sh. Shiv Lagan S/o Shri Rajender Thakur who raised dispute through ‘Engineering workers Lal Jhanda Union’ vide letter dated 27.02.2018 have been terminated by the management of M/s Security Solutions and Manpower Services illegally and / or unjustifiably? If yes, to that relief is he entitled and what directions, if any, are necessary in this respect?”

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the managements, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Date: 29th July, 2022.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2022

का.आ. 1018.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14 की धारा 17) के अनुसरण में केन्द्रीय सरकार मेसर्स कोटक महिंद्रा बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एर्नाकुलम के पंचाट (संदर्भ संख्या 48/2015) को प्रकाशित करती है।

[सं. एल-12012/109/2015-आई आर (बी-1)]

ए. के. यादव, अवर सचिव

New Delhi, the 19th October, 2022

S.O. 1018.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 48/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Ernakulam* as shown in the Annexure, in the industrial dispute between the management of M/s. Kotak Mahindra Bank and their workmen.

[No. L-12012/109/2015– IR(B-1)]

A. K. YADAV, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT,

ERNAKULAM

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Tuesday the 10th day of May 2022, 20 Vaisakha 1944)

ID No.48/2015

Workman/Union : The Secretary
United Trade Union Congress
Idukki District Committee Office
Nayarupara
Idukki P.O.
Idukki – 685602
By Adv.Jimmy George

Managements : 1. The Managing Director
M/s. Kotak Mahindra Bank
[erstwhile ING Vysya Bank Ltd.]
Corporate Office, 22, M.G.Road
Bangalore – 560001
2. M/s.Vrudhi Outsourcing Services Pvt Ltd.
Vrudhi House No.41/1305
Sangamam By Lane III
Padivattom, Edappally P.O.
Kochi - 682024
By Adv. Paulson C. Varghese

This case coming up for final hearing on 30.03.2022 and this Industrial Tribunal-cum-Labour Court on 10.05.2022 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-12012/109/2015-IR(B-I) dated 13.10.2015 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

“Whether the action of the erstwhile ING Vysya Bank Ltd (now Kotak Mahindra Bank Ltd) in not regularizing the services of Sri.Eldo Mathew sub-staff of the Thodupuzha branch of the Bank is justified ? If not, to what relief the concerned workman/union is entitled ?”

3. The Union filed the claim statement on behalf of Sri.Eldho Mathew as the workman. The workman was working at Thodupuzha Branch of ING Vysya Bank from 19.01.2009, as a sub-staff. His service was continuous and uninterrupted. The workman was being paid Rs.225/- per day for the period starting from the date of appointment. The salary was being paid on a monthly basis through his Bank account maintained at the said Branch. As a trite practice in the Management Bank, after a period of 3 years daily wage service candidate would be considered for regularization. The workman had a legitimate expectation of being regularized by the Management bank. The Management failed to regularize the service of the workman. The workman is transferred to a private contractor without his permission or knowledge. Aggrieved by the same, the Union approached the Assistant Labour Commissioner(Central). The transfer of the employment of the workman without his knowledge or permission is

illegal as the same is without complying with the provisions of Industrial Disputes Act. At the time of transfer, the workman was not given any notice. There is no provision for the Management Bank to unilaterally transfer the services of an employee to the rolls of a private contractor, without employee's consent and that too after the employee was in the rolls of the Management Bank for several years. The transfer of the workman from the rolls of the Bank to a private contractor is illegal. In the conciliation proceedings before the Assistant Labour Commissioner(Central), the Management Bank produced an agreement between the Bank and contractor M/s.Vrudhi Outsourcing Pvt Ltd. The said agreement is a sham contract which was prepared only to defeat the genuine claims of the workman. The alleged agreement with M/s.Vrudhi Outsourcing Pvt Ltd is dt.01.09.2012. The workman has no connection with the contractor. The workman was working under the supervision of the senior officials of the Management Bank. The workman is entitled for regularization of his service with the Management Bank from the year 2009.

4. The Management filed objection denying the claim of the workman. The Management Bank, ING Vysya Bank, is amalgamated with Kotak Mahindra Bank w.e.f. 01.04.2015 and for all purposes the Management Bank is Kotak Mahindra Bank. The Management Bank is a scheduled commercial bank. The workman has no locus standi to raise an industrial dispute as per Sec 2(k) of the Industrial Disputes Act. The Union may be put to strict proof of the membership of Sri.Eldo Mathew in the Union. The workman is not an employee of the Management Bank. The Management entrusted certain supporting services at the Branch to various contractors. One such contractor is M/s.Vrudhi Outsourcing Services Pvt Ltd. M/s.Vrudhi Outsourcing Services Pvt Ltd is a service provider for the Management in various branches. The workman was employee of M/s.Vrudhi Outsourcing Services Pvt Ltd. The Management has no employer- employee relationship with the workman. The statutory benefits such as Provident Fund, ESI, Bonus etc., of the workman was paid by M/s.Vrudhi Outsourcing Services Pvt Ltd. The workman was signing in the Attendance Register maintained by M/s.Vrudhi Outsourcing Services Pvt Ltd. The Management Bank denied that the workman was transferred to a private contractor. Not being an employee of the Management, there is no question of any transfer. There is no notification U/s 10 of the Contract Labour (Abolition and Regulation) Act. Therefore the outsourcing agreement between the Management Bank and M/s.Vrudhi Outsourcing Services Pvt Ltd is legally valid.

5. The Union examined WW1 and marked Exbts.W1 to W6, all Exhibits are marked subject to objection and subject to proof. The Union also examined as WW2 and marked Exbts.W7 to W14 subject to the objection by the Management on the ground that the documents are all photocopies and not authenticated by any responsible person. The Management filed IA no.239/2019 praying for impleading M/s.Vrudhi Outsourcing Services Pvt Ltd as additional Management. After hearing the parties vide order dt.24.06.2019, this Tribunal allowed the IA and M/s.Vrudhi Outsourcing Services Pvt Ltd was impleaded as 2nd Management. M/s.Vrudhi Outsourcing Services Pvt Ltd entered appearance and filed a written statement. It is pleaded that the 2nd Management had a contract with the 1st Management for the period from 01.09.2012-15.02.2017 and the workman was an employee of the 2nd Management during the period of contract. The contract with the 1st Management was terminated on 15.02.2017 vide letter dt.12.01.2017. It was also admitted that the 2nd Management is ready to absorb the workman into the rolls even after the contract termination with the Management Bank and to deploy him into any of the sites. He continued his services with the Management Bank for more than one year. It was also clarified that the workman has no claim against the 2nd Management. After the written statement filed by the 2nd Management the Union was permitted to file a rejoinder. It was further clarified that the workman had no connection or arrangement with the 2nd Management. The contract agreement filed by the 2nd Management only prove that the 2nd Management had an agreement with the 1st Management from 2012. The case of the Union is that the 1st Management engaged the workman w.e.f. 01.09.2012. The workman never worked for the 2nd Management. The workman also did not receive any statutory benefits from the 2nd Management. The 2nd Management failed to produce any documents to substantiate the claim that all the statutory benefits were paid by them to the workman. The 1st Management had paid the bonus for the year 2012 to the workman. It is also admitted by the 2nd Management that the workman was working with the 1st Management even after the termination of the contract with the 2nd Management. The Management filed IA no.415/2019 to recall and re-examine WW1. The application was rejected by this Tribunal vide order dt.15.10.2019. The Management examined MW1 and marked M1 to M3 series through the witness.

6. The Union filed OP(LC) no.16/2017 before the Hon'ble High Court of Kerala seeking an expeditious disposal of the this industrial dispute. The Hon'ble High Court vide order dt.14.09.2018 disposed off the matter directing the Management to continue engaging the workman as per its earlier direction on 25.04.2017 and also directed this Tribunal to dispose of the matter at the earliest. In OP(LC) no.01/2020 filed by the Management before the Hon'ble High Court of Kerala, the Hon'ble High Court vide order dt.17.03.2020 clarified that the proceedings before the Tribunal have not been interdicted by any order by the High Court.

7. On completion of the pleadings the following issues are framed for adjudication

- a. Whether the services of the workman is transferred by the Management to a contractor without his consent?

- b. Whether the workman is entitled for regularization in the service of the Management Bank ?
- c. Relief and cost?

8. Issue No.1

According to the learned Counsel for the Union, the workman joined the services of the Management Bank on 19.01.2009, when the Thodupuzha Branch of the Management Bank opened. He was working as a sub-staff on daily wages of Rs.225/- per day. According to the Management, he was never appointed by the Management Bank and was therefore not an employee of the Management Bank. The Union produced photocopies of various documents to substantiate the fact that the Management Bank appointed the workman w.e.f. 19.01.2009 with the approval of the Regional Head and he continued in the service of the Management Bank and was being paid wages at the rate of Rs.225/- per day. However the marking of those documents were objected to by the learned Counsel for the Management on the ground that the documents are photocopies and the same are not authenticated by any responsible officer of the Bank. Accordingly the documents were marked subject to objection and proof. It is relevant to pointed out that WW1 was examined on 07.04.2017 and the above documents which are very much relevant to decide the issues were marked subject to objection and proof. The appropriate course open to the Union was to call for the originals of these documents from the Management side. However the Union did not take any action to call for the originals from the Management side. After closing the evidence and after hearing the Union, the Union filed an IA calling for production of the originals of those documents on 30.03.2022. The IA was rejected as the matter was already heard and was in the final stages of award. Having said that, it is seen that the workman was working with the Management Bank during 2009 and the case of the Management is that the workman worked with the 2nd Management. The case of the 2nd Management is that the contract is entered between the 1st Management and 2nd Management only w.e.f. 01.09.2012. The 1st Management failed to explain the payments made to the workman from 2009-2012 which indirectly indicates that the workman was working as a daily wage temporary employee with the Management from 2009-2012. Thereafter the evidence available support the case of the 1st and 2nd Managements that the workman was working with the 2nd Management till the contract is terminated on 15.02.2017. According to the learned Counsel for the Union, the services of the workman were transferred to the 2nd Management without the consent of the workman and therefore it is in violation of the provisions of Industrial Disputes Act and therefore illegal. It is seen that the workman raised the industrial dispute in the year 2015 claiming regularization after his services were transferred to the 2nd Management. Though there is no categorical evidence to the fact that the workman is transferred by the Management Bank, the fact remains that he continued the services with the 2nd Management from 09/2012 onwards. It is not clear from the available evidence whether it is a transfer by the 1st Management to the 2nd Management or the workman opted to join the 2nd Management after the 2nd Management entered into an agreement with the 1st Management for outsourced manpower for housekeeping. Exbt.M3 series would show that the salary of the workman was paid by the 2nd Management from 02/2014 onwards.

9. Considering the evidence on record, it is not possible to conclude that the services of the workman was transferred by the 1st Management Bank to the 2nd Management in 09/2012.

10. Issue no.2 & 3

The case of the Union is that the workman continued in the service of the Management as a daily wage temporary employee from 19.01.2009 when the Thodupuzha Branch of the Management Bank was opened, on a daily wage of Rs.225/-. This is strongly denied by the learned Counsel for the Management. Though WW1, who was the Manager at the time of the opening of the Branch, in his evidence categorically stated that the workman was an office boy when the Branch was opened. The marking of the supporting documents were seriously objected to by the Management and the Union failed to call for the originals from the Bank to draw any conclusion that the workman was in the service of the Management Bank w.e.f. 19.01.2009. As already pointed out, the right course of action open to the Union was to call for the originals of those documents which were marked through WW1 which ought to have proved the claim of the Union that the workman was appointed by the Management Bank on temporary basis w.e.f. 19.01.2009. The claim of the Union is that the workman had continuous service with the Management Bank till 08/2012 when his services were transferred to the 2nd Management without his consent. The Union ought to have produced some documents to support their case that the workman had 240 days of service one year prior to his transfer to the 2nd Management. However the Union failed to produce the relevant documents or call for the documents from the Management to substantiate the continuous service of the workman with the Management Bank. The workman, when he was examined as WW2, categorically stated in his evidence that all the original documents, copies which were produced by him are available with the Bank. However the Union failed to file any application calling for the originals from the Bank and the photocopies were marked in these proceedings through WW1, subject to objection and proof. In view of the above, the Union failed to establish the continuous service of the workman with the Management for 240 days one year prior to his transfer to the 2nd Management.

11. Considering the facts, pleadings and evidence, I am inclined to hold that the Union failed to substantiate their case for regularization of the workman in the service of the 1st Management Bank.

12. An award is passed holding that the Management Bank is justified in not regularizing the service of the workman as sub-staff of Thodupuzha Branch of the Management Bank. He is not entitled for any relief claimed in the claim statement.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 10th day of May, 2022.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the Workman:-

WW1 - Sri.Jube Paulose, dt.07..04.2017

WW2 - Sri.Eldo Mathew, dt.06.11.2019

Witness for the Management:-

MW1 - Sri.Nagendra Prasad K. V., dt.10.11.2021

Exhibits for the Workman:-

(The documents were marked subject to proof)

- W1 - True copy of Circular no.302 dt.03.12.2007 of 1st Management HR Dept.
- W2 - True copy of Email communication between Branch Head and his superiors regarding appointment of workman
- W3 - True copy of daily wages book maintained by the Bank for the period January 2009-September 2012
- W4 - True copy of relevant pages of Attendance cum Muster Roll showing attendance of workman for some months in the year 2009, 2010, 2011 and 2012
- W5 - True copy of payment receipts for the years 2009, 2010, 2011 and 2012
- W6 - True copy of Circular no.408 dt.19.12.2011 issued by the 1st Management
- W7 - True copy of Bank account statement for the years 2009, 2010, 2011 and 2012
- W8 - True copy of Bank account statement for the year 2015
- W9 - True copy of Bank statement showing the payment of the salary by 2nd Management
- W10 - True copy of Bank statement showing the transactions for the period of December 2012
- W11 - True copy of Cash Remittance Register showing deposit of money and the receipt of payment batta expenses for the same
- W12 - True copy of Circular no.117 dt.12.06.2014 issued by the 1st mana
- W13 - True copy of appointment letter for the appointment of Mrs.Jessy Jose
- W14 - Letter regarding locus standi of the Union to raise disputes on behalf of workman

Exhibits for the Management:-

- M1 - True copy of order DBR dt.31.03.2015 issued by Reserve Bank of India on amalgamation of ING Vysya Bank Ltd with Kotak Mahindra Bank Ltd
- M2 - True copy of the agreement entered between the 1st Management and 2nd Management

- M3 - True copy of the wage slip for the month of February 2014 issued by 2nd Management
 M3(a) - True copy of the wage slip for the month of April 2014 issued by 2nd Management
 M3(b) - True copy of the wage slip for the month of August 2014 issued by 2nd Management
 M3(c) - True copy of the wage slip for the month of October 2014 issued by 2nd Management
 M3(d) - True copy of the wage slip for the month of November 2014 issued by 2nd Management
 M3(e) - True copy of the wage slip for the month of December 2014 issued by 2nd Management

नई दिल्ली, 19 अक्टूबर, 2022

का.आ. 1019.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अध्यक्ष, आर्मी पब्लिक स्कूल, देहरादून; प्राचार्य, आर्मी पब्लिक स्कूल, देहरादून के प्रबंधन के संबद्ध नियोजकों और श्री मदन ठाकुर, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली पंचाट (संदर्भ संख्या 26/2020) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2022 को प्राप्त हुआ था।

[सं. एल-42025/07/2022-30-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th October, 2022

S.O. 1019.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 26/2020) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chairman, Army Public School, Dehradun; The Principal, Army Public School, Dehradun and Shri Madan Thakur, worker which was received along with soft copy of the award by the Central Government on 11.10.2022.

[No. L-42025/07/2022-30-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 26/2020

Date of Passing Award- 22nd August, 2022

Between:

Shri Madan Thakur,
 R/o 1/7, Truner Road, Lane No.1,
 Clement Town, Dehradun- 248001

... Workman

Versus

1. The Chairman,
 Army Public School,
 14, RAPID(S),
 Clement Town, Dehradun- 248002.

2. The Principal,
 Army Public School,
 Clement Town, Dehradun 248002.

... Managements

Appearances:-

Shri claimant in person (A/R) : For the Workman

None for the management (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of M/s Army Public School, Clement Town, Dehradun, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- D-831/A/2019/09/IRDDN dated 16.01.2020 to this tribunal for adjudication to the following effect.

“Whether the termination of the services of Shri Madan Thakur, engaged in Army Public School, Clement Town, Dehradun as Lower Division Clerk (LDC) w.e.f 06.09.2009 in violation of the terms of Army Welfare Education Society (AWES) is legal and proper? Whether the workman is entitled for regularization/reinstatement of his service in the said establishment.”

As stated in the claim petition, the claimant, an ex army personnel was appointed in the Army Public School, Clement Town Dehradun, in the year 2009 as a Lower Division Clerk on a fixed term for three years on consolidated salary of Rs 8000/- per month. On completion of three years, his service was extended for a further period of three years i.e upto Nov 2012 on an increased consolidated salary of Rs 11,800/- per month. At the end of this three year period i.e Nov 2015, though his service was to be extended for a further period of three years as per the Army Welfare Education Society (AWES) Rules, the new principal in gross violation of the said Rules, extended his service for a period of one year with effect from 26th Nov 2015 on an increased monthly remuneration of Rs 16,900/-. On 3rd Nov 2016, his service was given extension for a period of 2 years and the monthly remuneration was fixed at Rs 17,745/-. At the end of this period the extension was granted for six months only, after which his service was terminated. His last drawn salary per month at that time was 20,945/-. The other stand of the claimant is that on 28th August 2016, the AWES had issued the policy on employment of administrative staff, less group D employees in Army Public School. According to this guideline, all the Administrative staff employed on contractual basis were to be converted to regular employee only on merit. The claimant was not subjected to any kind of selection procedure to prove his merit, but his service was terminated with effect from 3rd June 2019 illegally. All his effort demanding justice failed and he approached the labour commissioner for a conciliation. The management of the school represented by the principal though participated in the process of conciliation, the same failed and the appropriate Govt., referred the matter for adjudication on the claim. In the claim petition the claimant has thus prayed for a direction to regularize his service with effect from 27th Nov 2015 and pay his unpaid salary from June 2019.

Notice of the claim was served on the Management and on 03/03/2020 Advocate Rohit Bhagat had appeared on behalf of the Management by filing his memo of appearance, which has been placed on record. The said A/R ON 3rd March 2020, received the claim copy and requested for time to file WS. The matter was taken up through video conferencing on 19th August 2021 for filing of WS. On that day, though Adv Mr. Bhagat had appeared, did not file WS and thereafter did not attend this proceeding. Hence the Management was proceeded ex parte by order dated 9th Nov 2021.

During course of hearing the claimant testified as WW1 and produced his letters of appointment dated 4th Nov 2009, 7th Nov 2012, 26th Nov 2015, 3rd Nov 2016 and 30th Nov 2018. He has also filed the policy of Employment dated 28/08/2015 issued by AWES and photocopy of the proceedings held before the conciliation officer. Besides the claimant also placed on record the photocopy of the Rule Book containing at Rule 130 the service condition of the contractual administrative staff. In his sworn testimony the claimant has stated that he was made a victim of the whimsical decision of the principal who, clearly violating the service condition of the contractual administrative staff gave him appointment for one year, two year and lastly for six months after which extension was denied. Not only that when the AWES had issued guideline for regularizing the services of contractual staff the management did not do so and on the contrary did not extend his appointment which amounts to termination though no letter of Termination was served on him. This evidence of the claimant has remained un rebutted as the management has been proceeded ex parte without filing written statement.

The oral evidence of the claimant has been supported by the documentary evidence. The documents clearly prove that the claimant was initially appointed as a LDC in the year 2009 for a fixed term and consolidated salary. After completion of one tenure he was appointed for another term which continued up to 3rd June 2019 and his last drawn salary was Rs 20,945/- per month. It appears from the document filed which is an extract of the Rule book of AWES, the appointment of the administrative staff, other than Administrative officer would be appointed for a period of three years. It further states that on expiry of initial contract period, based on their performance and physical fitness, he may be appointed afresh and there would be a break of minimum seven days in between the appointments. The appointment letters filed by the claimant shows that the said rule was followed up to Nov 2012. But suddenly he was reappointed for a period of one year which expired on 25th Nov 2016 and there after he was reappointed for a period of two years and on expiry of the said period he was appointed for a period of six months only and after that it was not extended. This whimsical re appointment in violation of the prescribed Rule amounts to show of partiality and victimization falling under the category of unfair labour practice.

Be it stated here that the management in the year 2015 had issued a policy dated 28/08/2015, aiming at regularizing the service of Administrative staff other than an Administrative Officers and group D employees and such regularization should be on the basis of merit. It is the stand of the claimant that the service of his juniors were regularized where as he was denied the benefit. He also asserted that at no point of time he was called to attend any selection process to prove his merit. No evidence to dispute this stand is available on record for non participation of the Management in this proceeding. The claimant has filed photo copies of the proceeding held before the Labour commissioner Derhadun. The respondent being represented by the principal of the school had participated in the said proceeding. But it was never the stand of the management that the claimant could not qualify on merit to be converted as a regular employee of the management. There is also no material on record to presume that the performance of the claimant was not satisfactory, so that he was not given re appointment or nor considered for regularization. The claimant in his oral statement has stated that the persons junior to him were absorbed as regular employees in terms of the policy dated 28th Aug 2015. This un rebutted and uncontroverted evidence again proves that the claimant for the partiality shown to him was made a victim of unfair labour practice.

In the case of **Secretary State of Karnatak vs. Uma devi, reported in AIR 2006 SC 1806** the Hon'ble Apex Court have held that:-

Para 32 –“the power given to the Industrial Tribunal and Labour Courts u/s 30 of the ID Act is very wide and affirmative action mentioned therein is inclusive and not exhaustive. Employing persons as badlis, casuals, or temporary and to continue them as such for years, with the object of depriving them of the status and privilege of permanent employee is unfair labour practice on the part of the employer under item 6 of Schedule IV. Once such unfair labour practice is established, the Industrial and Labour courts are empowered to issue preventive as well as positive direction to an erring employer.”

In this case the evidence on record proves that the management had regular vacancies in the cadre the claimant was working and without considering his candidature for regularization as per the policy of the Management, he was refused reappointment and his juniors' services were regularized. The evidence not being controverted and there being no evidence that the claimant had failed on merit for regularization, the action of the management is held to be unfair labour practice meted to the claimant by the Respondent and the same need to be remedied by issue of a positive direction. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the claimant. The termination of service of the claimant with effect from 3rd June 2019 is held to be illegal. The management is directed to reinstate him in service regularize his service with effect from 27th November 2015 and pay his back wages from 3rd June 2019 as per his last drawn salary. On reinstatement and regularization as directed, the claimant shall be entitled to all financial and other service benefits as a regular employee on the date of regularization. This order shall be given effect to by the management within two months from the date of publication of the Award. On compliance within the time stipulated, the financial benefit due to the claimant shall be paid without interest failing which the amount accrued shall carry interest @ 9% per annum from the date of accrual and till the date of actual payment. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

22nd August, 2022

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2022

का.आ. 1020.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रबंधक/प्रधान अधिकारी, सेना पत्नी कल्याण संघ (आवा छात्रावास), व्यावसायिक संस्थान, छावनी, नई दिल्ली के प्रबंधन के संबद्ध नियोजकों और सुश्री राधा देवी, कामगार के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2 नई दिल्ली पंचाट (संदर्भ संख्या 04/2019) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2022 को प्राप्त हुआ था।

[सं. एल-14012/08/2018 - आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th October, 2022

S.O. 1020.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 04/2019) of the Central Government Industrial Tribunal cum Labour— II New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Manager/Principal Officer, Army Wives Welfare Association (AWWA Hostel), Vocational Institute, Cantonment, New Delhi and Ms. Radha Devi, Worker, which was received along with soft copy of the award by the Central Government on 11.10.2022.

[No. L-14012/08/2018-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI**

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 04/2019**Date of Passing Award- 01.09.2022****Between:**

Ms. Radha Devi,
W/o Shri Ramesh Pal,
R/o House No. 11, Mandir Marg, Gopinath Bazar,
Delhi Cantonment, New Delhi.

... Workman

Versus

Manager/Principal Officer,
Army Wives Welfare Association (AWWA Hostel), Vocational Institute,
Women Hostel, Rao Tula Ram Marg, Opp. Signals Enclave,
Cantonment, New Delhi-110010.

... Management

Appearances:-

Shri Puneet Singhal (A/R) : For the claimant
None for the management (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Army Wives Welfare Association (AWWA Hostel), and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-14012/08/2018 (IR(DU)) dated 06/12/2018 to this tribunal for adjudication to the following effect.

“Whether the action of the management of Army Wives Welfare Association (AWWA Hostel) in terminating the services of the workman Ms. Radha Devi W/o Shri Ramesh Pal w.e.f 14.06.2013 who was working on the post of Aaya since last 12(Twelve) years is illegal and/or unjustified and if so to what relief is the workman entitled and what directions are necessary in this respect?”

In the claim statement the claimant has stated that she was working for the management since 12 years preceding to the date of his illegal termination on 14.06.2013 and her last drawn wage was 7254/- per month. She was discharging the duty of Aaya in the Hostel run by AWWA. The management was not maintaining the records of the employee and indulging in different illegal practices to deprive the workers of their lawful rights. Since the management was not paying the minimum wage, not maintaining the wage register, not issuing the wage slip etc the claimant alongwith others had raised labour dispute before the labour commissioner in the year 2012. Being directed by the Labour Commissioner the management paid the arrear salary to the claimant and others in accordance to the minimum wage in the year 2012 and then cleared the arrears thereof for the period April 2011 to September 2011 and obtained acknowledgement from the claimant and others. On the demand for wage slip they were made to sign on a payment register copy of which was retained by the management. Whenever any employee was raising any kind of complaint the management with a view to suppress their voice was withholding the salary and giving out threatening of termination. During the pendency of the Industrial dispute before the Labour Commissioner the management managed to create some documents to show that the claimant and others are daily wagers although they were getting their remuneration per month. In the month of May 2013 all the employees working for the management had staged a protest against the atrocities and demanded release of their withheld salary. The management offered them to sign the documents relating to full and final settlement as a pre condition for release of withheld salary. Whereas some employees under pressure agreed to sign the papers with regard to full and final settlement, the claimant and few

others protested the same. Thus, the management extended the service of the said protesting employees till 14.06.2013 and thereafter suddenly terminated the services of the said workman including the claimant. At the time of termination no domestic inquiry was pending against the claimant. The management while terminating the service of the claimant had not followed the procedure of Id Act as no notice, notice pay or termination compensation were paid to her. The salary for the month of May 2013 and till 14th June 2013 were held up but released only on 29.05.2017 as per the direction of the competent labour commissioner. The claimant who doesn't possess any skill has remained unemployed since the date of illegal termination of her service. When all her efforts for reinstatement failed, she again approached the labour commissioner where steps were taken for conciliation. But the efforts for conciliation failed too. The appropriate government referred the matter to this tribunal for adjudication.

The management though was properly served with the notice did not appear before this tribunal to participate in the present proceeding. Hence, by order dated 25.07.2019 the management was proceeded ex parte and the claimant was called upon to adduce evidence.

The claimant testified as WW1 and produced few documents which were marked as WW1/1 to WW1/3. These documents include the photocopy of the I cards issued to the claimant and renewed from time to time upto 2012. The documents also include the copy of the complaint filed before the labour commissioner and the demand notice sent to the management. The cross examination of the witness was marked Nil for the non appearance of the management.

The Ld. A/R for the claimant during course of argument submitted that this is a typical case of unfair labour practice adopted by the management to deprive the claimant of her lawful right. The oral and documentary evidence adduced by the claimant has not been rebutted by the management. The said unrebutted and unchallenged evidence of the claimant makes out a clear case for her reinstatement into service with full back wages.

The claimant in her sworn testimony has stated that she started working in the Hostel of the management and worked as such till the date of her termination i.e 14.06.2013. Her last drawn wage was Rs. 7254/- per month. The duty discharge by her was that of an Aaya in the hostel managed by the respondent. The management was not very happy on the claimant as she alongwith others was often raising complaints for the unfair practice adopted by the management. On their demand the management was compelled to pay them minimum wage. Being aggrieved by the pro-activeness of the claimant and others the management in May 2013 asked all the employees to leave their job on receipt of full and final settlement. Though, few employees accepted the offer the claimant did not agree. The management allowed her to work till 14.06.2013 and without giving him notice illegally terminated her service on that day. Another complaint being raised before the labour commissioner the management released her arrear salaries in the year 2017 only. But the claimant in this petition has claimed for reinstatement with back wages for the unfair labour practice meted to her. To support her stand the only document filed are the photocopies of the I cards issued by the management to her. These documents have been marked as exhibit WW1/1 (Colly). These documents describe the claimant as the employee of AWWA i.e the respondent from 30.03.2007 to 31.03.2012. This I card was issued under the seal and signature of the manager of AWWA Vocational Institute. The claimant during course of argument submitted that she is an illiterate workman and the management was not issuing any other document to her in proof of her employment. Even the salary slips signed by the claimant were being retained by the management. Thus, the claimant has pleaded that the illegal termination of service should be remedied by a direction to the management for her reinstatement with all back wages.

It is a decided Principle of law that for issue of a direction for reinstatement, the tribunal has to examine if there existed any employer and employee relationship between the claimant and the management on the alleged date of termination. For this the burden lies on the party who asserts such relationship. It is very often seen that the claim is advanced by the illiterate and ignorant workman against the mighty employer. In such a situation it is very difficult to render documentary evidence in support of the oral documents of employment. In this case the claimant in her oral testimony has stated that she was working continuously for 12 years for the management preceding to the date of termination. Photocopies of the I cards are the only documents filed by her to support the oral statement. As stated in the preceding paragraph the evidence adduced by the claimant stood unrebutted for the absence of the management. Hence, this tribunal has no hesitation for accepting the same, however slender it may be to hold that the claimant was the employee of the management and had worked for 12 years continuously preceding to the alleged termination.

The other grievance of the claimant is that during the course of employment the minimum wage was not paid for which she had raised a dispute before the labour commissioner and for the direction given by the commissioner, minimum wage was paid belatedly. At the time of alleged termination no inquiry was pending nor any notice of termination was issued to her. In the case of Maharashtra State Road transport corporation and another vs. **Casteribe Rajya Parivan Karmachari Sangathan 2009 Supreme(SC) 1504** the Hon'ble Supreme Court have clearly held that engaging employees as Badlis, casuals or temporaries and to continue therein as such for years with the object of depriving them of their status amounts to unfair labour practice. Now it is to be examined if the action of the management in terminating the service of the claimant was illegal and to what relief she is entitled to. It has already been held that the claimant has successfully established her relationship as the employee of the management and that she was working continuously for the management before the termination. Reference can be made to section 25-F of

the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of Surendra Kumar Verma and Others vs. CGIT Delhi had observed that

“Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages.”

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union reported in 2008 LLR 801** the Hon'ble Apex Court after giving due consideration to several observations in different pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case where the claimant has prayed for relief of reinstatement simplicitor. But absolutely no evidence has been laid by the claimant from which it can be presume that the work discharged by the claimant was perennial in nature and there still exist vacancy in the management. In such a situation it is not felt proper to direct that the claimant should be reinstated automatically. However, keeping the circumstances in view and for the foregoing reasons it is concluded that the claimant was subjected to unfair labour practice by the management. There was a gross violation of the provisions of section 25F of the ID Act. Hence, ordered.

ORDER

The reference be and the same is accordingly answered against the management and in favour of the claimant. The management is directed to pay a lumpsum amount of Rs. 150,000/- to the claimant for the illegal termination of service meted to her within 45 days from the date of publication of this award without interest failing which the amount shall carry interest @ 9% per annum from the date of illegal termination and till the final payment is made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

1st September, 2022

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2022

का.आ. 1021.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य महाप्रबंधक, भारत संचार निगम लिमिटेड, देहरादून; महाप्रबंधक, भारत संचार निगम लिमिटेड, देहरादून; अनुमंडल प्रबंधक, भारत संचार निगम लिमिटेड, देहरादून के प्रबंधन के संबंध में नियोजकों और श्री नरेंद्र सिंह व अन्य, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2 नई दिल्ली पंचाट (संदर्भ संख्या 18/2013) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2022 को प्राप्त हुआ था।

[सं. एल-40011/25/2012-आईआर-(डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 19th October, 2022

S.O. 1021.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 18/2013) of the Central Government Industrial Tribunal cum Labour— II New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, Bharat Sanchar Nigam Limited, Dehradun; The General Manager, Bharat Sanchar Nigam Limited, Dehradun; The Sub Divisional Manager, Bharat Sanchar Nigam Limited, Dehradun and Shri Narender Singh & Ors., Worker, which was received along with soft copy of the award by the Central Government on 11.10.2022.

[No. L-40011/25/2012 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi

INDUSTRIAL DISPUTE CASE NO. 18/2013

Date of Passing Award- 22nd August, 2022

Between:

Shri Narender Singh & Ors.,
S/o Shri Govind Singh,
R/o Village-Jeevangarh,
Ward No. 9, P.O. Dakpatthar,
Distt. Dehradun, Uttarakhand.

... Workmen

Versus

1. Chief General Manager,
Bharat Sanchar Nigam Limited,
Windlass Shopping Complex,
Rajpur Road, Dehradun- 248001.
2. The General Manager,
Bharat Sanchar Nigam Limited,
E-10, Exchange, Patel Nagar,
Dehradun.
3. Sub Divisional Manager,
Bharat Sanchar Nigam Limited,
Vikas Nagar,
Dehradun.

... Management

Appearances:-

Shri Rajesh Ranjan (A/R) : For the Workman

Shri Ajay Gupta (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bharat Sanchar Nigam Limited, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 40011/25/2012 (IR(DU)) dated 05.03.2013 to this tribunal for adjudication to the following effect.

“Whether the action of the management of BSNL, Vikas Nagar, Dehradun by not regularizing 18 workmen (list enclosed) is unjustified? If so, what relief the workmen are entitled to?”

Though the reference received from the Government had enclosed a list of 18 workmen, only 6 of them, (list appended to this award) filed the claim statement and contested the Industrial Dispute.

The claimants in the claim statement have stated that they had been working with the management as a daily wage/casual worker since the year 2000 till their illegal termination on 23.03.2012. Initially the remuneration paid to them was Rs. 100/- per day and for the accumulated amount for a month they were being paid under payment

voucher. Subsequently they were getting approximately Rs 2500/- per month which was much less than the minimum wage prescribed by the government from time to time. Their last drawn salary was approximately 2500/- per month. The workmen had worked for the management for more than 12 years diligently leaving no scope for complaint. During this period despite their demand no appointment letter was issued to them though they had completed work for more than for 240/- days in each calendar year. Not only that during the course of their employment they were being asked to work for more than 7/8 hours a day. The provisions of PF leave salary etc were never made available to them. When the management did not consider their request to regularize them in the post they were working, a complaint was made by them before the Central Labour Commissioner in the year 2012 praying regularization of their job and payment of Appropriate salary. The conciliation proceeding failed. With a view to take revenge the management without issuing any show-cause notice and conducting domestic inquiry terminated the services of the present workmen w.e.f. 23.03.2012 for the failure of the conciliation the Appropriate Government referred the matter to this tribunal for adjudication. The further stand of the workmen is that since, the date of termination they are unemployed having no other source of income. Hence, they have prayed for an award to be passed holding the termination of their service by the management to be illegal with a further direction to the management for reinstating them in service with full back wage since the date of termination and till the date of reinstatement. The further prayer is that their service with the management be regularized.

The management BSNL filed the written statement rebutting the stand of the workmen. While denying the employer employee relationship between them, the management has pleaded that the proceeding is not maintainable as allegation doesn't amount to an industrial dispute. The specific stand of the management is that the workmen were working for a BSNL through a contractor who has been awarded with a contract to do certain work for the management. The said contractor is a necessary party and for his non-joinder the proceeding is liable to be dismissed. In the WS it has also been mentioned that the workmen were never engaged by the management either as daily wager or casual workers. All the claims advanced by the workmen are illegal and not tenable in the eye of law. While denying the alleged termination of service, the stand of the management is that when the workmen were not employed by the management the question of their termination doesn't arise. On the same ground the management has denied the necessity for serving any termination notice on the workmen. Thereby the management has prayed for dismissal of the proceeding.

On the rival pleadings the following issues were framed for adjudication.

ISSUES

1. Whether the action of the management of BSNL, Vikas Nagar, Dehradun by not regularizing 18 workmen (list enclosed) is unjustified? If so its effect?
2. Whether relationship of employer an employee exists between respondent and workman? If so its effect?
3. To what relief the workmen is entitled to?

During hearing the management even though filed written statement and partly cross examined the witness of the claimant, subsequently did not participate and the hearing was closed without any evidence by the management being recorded. When the award was passed on 25th April 2019 the management being aggrieved filed an application seeking an opportunity for adducing evidence. That application was heard and disposed of by order dated 08.02.2022 wherein a direction was given to the management to adduce evidence. Accordingly on 20.05.2022 the management examined one of its Engineer as MW1 and produced some documents marked as MW1/1 to MW1/3.

During the hearing, on behalf of the workmen all the 6 claimants had testified as WW1/1 to WW1/6. Out of them only WW1 and WW2 were cross examined at length by the management before it was proceeded exparte. After setting aside of the exparte award the remaining witnesses did not appear to face the cross examination. Hence, their evidence was espoused by order dated 20.05.2022. On behalf of the claimants several documents were filed and marked in a series of WW1/1 to WW1/11. These documents include payment receipt issued to the claimants on different dates, letter correspondence between the workmen and the management ventilating their grievance complaints made by the claimants collectively and the attendance register etc.

FINDINGS

ISSUE NO. 2

This issue has been taken up for consideration at the first instance since it will have a considerable influence on the decision of other issues. The workmen have claimed that since the year 2000 they had been working for the management continuously till the date of their illegal termination made on 23.03.2012. The oral evidence adduced by

WW1 and WW2 fully support the claim statement in this regard. To render documentary evidence in support of the same on the behalf of the workmen the attendance register marked as WW1/10 and WW1/11 have been filed. These are the photocopies of the register in which the names of the claimants of this proceeding clearly appears and marks their presence on different months and dates starting from 2004 to 2011. On behalf of the workmen the Ld. A/R during course of argument submitted that during examination of the witnesses the photocopy of the attendance register was filed and exhibited. The Ld. A/R for the management did not object to the admissibility of the same. He also argued that the management is the custodian of all the registers and when the original was not filed by the management to dispute the authenticity of the photocopies the one and only conclusion is that the said copies are authentic documents.

The law of evidence provides that any document proposed to be proved should be produced in original as primary evidence and the secondary evidence is permissible only when the original is proved to be lost or not within the reach of the party relying on the same or the same cannot be produced without inordinate delay and difficulty. In this case admittedly the claimants are the poor workmen who have no link with the management on account of their alleged retrenchment. In such a situation it cannot be insisted upon them to produce the original document from the custody of the management. The management in this case was participating in the proceeding when the document that is the photocopy of the attendance register was exhibited. Hence, this tribunal feels it proper to accept the photocopies of the documents as secondary evidence.

The workmen have asserted that they were working directly under the management having no intermediary contractor. Though in the written statement a reference has been made by the management about the contractor through whom these workmen were engaged, there is absolutely no evidence adduced by the management to prove the identity of the contractor or the nexus between the contractor and the workmen. Pleading however elaborate may be cannot take the place evidence which is required to be proved by evidence. In this proceeding the AGM of BSNL while testifying as a witness had produced a document marked as MW1/1 which is a photocopy of the work order issued to a contractor for supply of maintenance and upkeep of parts of Telecom Infrastructure in Dehradun for a period of one year commencing from 01.03.2012 to 28.02.2013. Another document has been filed and marked as MW1/2. This is another work order for supply of maintenance and upkeep of parts of Telecom Infrastructure for the period 01.07.2011 to 03.06.2012. On the basis of these documents the Ld. A/R for the management emphatically argued that the claimants were the employees of the contractor and working in the premises of the management. But these documents in no way prove the employability of the claimants under the contractor as the documents do not establish the employer employee relationship between the contractor and the claimants. Another document marked as MW1/3 has been filed. This seems to be a photocopy of the attendance register for the period 01.06.2010 to 30.06.2010 maintained by ACME Enterprises. No relevancy of this document is proved with regard to the present claim as neither the said document contains the names of the claimants nor any other evidence has been placed on record to establish that ACME Enterprises was at any point of time had entered into a contract with the management BSNL for supply of maintenance and upkeep of parts. The document marked as MW1/1 and MW1/2 are the photocopies of the work order issued to M/s RN Infratech Pvt. Ltd. and M/s Aftab Infocom Pvt. Ltd. These two documents do not establish that the claimant were at any point of time working in the premises of BSNL being employed by the said contractor. Hence, these two documents are of no assistance to the management. In this regard the oral evidence of the management witness is important. The claimants have stated that during the course of their employment they were working in the BSNL offices at Harbert Pur and Vikas Nagar. But surprisingly the management witness during cross examination admitted that he was neither posted at Harbert Pur or Vikas Nagar BSNL Office in the year 2000 when the claimants started working for BSNL. He has also admitted that neither the joining nor the termination of the claimants had happened in the office where he was working and his evidence is based upon the documents available in the office only. The witness though clarified that from 2002 to 2007 when he was posted at Vikas Nagar the claimants were working under the contractor, no documents to that effect has been filed or placed on record. He also admitted that the documents filed by him and marked as MW1/1 to MW1/3 nowhere contains the name and reference of the claimants. On the other hand on behalf of the claimants besides the oral evidence several documents have been filed to prove their relationship with BSNL as its employees. These documents include the payment vouchers issued by the Junior Telecom Officer of BSNL to workmen for their remuneration in respect of the work done. Some of the vouchers marked in a series of exhibit WW1/1 have been issued by the SDE Phones Vikas Nagar Dehradun. Copies of the complaint register for the relevant period showing resolution of the complaints of the customers by the workmen from time to time has been filed. In addition to that the claimants have filed photocopies of the attendance register for the relevant period wherein the names of all the 6 claimants clearly appear. These attendance register are for the period 2004 to 2011. The management has disputed the same on the ground that the document attendance register cannot be relied upon since it does not contain any endorsement of the BSNL Officials. But surprisingly the management witness during cross examination has admitted that the photocopies of the documents filed by the claimants at page No. 12 to 22 are the duty registers of the claimants showing deputation and discharge of duty on different dates and those documents contain the names of the claimants. He also admitted that the work diary produced by the claimants is maintained by the BSNL and the same has nothing to do with the contractor and the name of the contractor nowhere finds place in the said diary. This oral evidence of the witness clearly proves that the claimants during the relevant period of dispute were working in the premises of BSNL and the

claim of the workmen find support from the documents filed by the claimants which purports to have been maintained during an undisputed point of time. Thus, all these documents together with the oral evidence adduced by the claimant and the management clearly lead to a conclusion that during the relevant period between 2000 to 2012 all the 6 workmen/claimants were the employees of the management and there exists a relationship of employer and employee between them.

In this regard reliance has been placed on behalf of the workmen in the case of **BSNL vs. Bhurumal decided by the Hon'ble Supreme Court of India in Civil appeal No. 10957 of 2013** where in by an award passed by the CGIT a diary containing the details of the job undertaken by the workmen on different dates were accepted as evidence for determining the employer employee relationship. The tribunal on the basis of the said documents have come to hold that the entries in the diary legally prove that the workmen were working under the direct and administrative control of the management and thus, they were the employees of the management. The Hon'ble Apex Court while analyzing the reasons assigned by the Presiding Officer of CGIT came to hold that there is no reason to disbelieve the diaries maintained during ordinary course of business and thereby discarded the argument advanced by the of BSNL management that the diary being a self serving document cannot be relied as evidence. In this case in the similar manner the workmen have relied upon the entries made in a diary showing the work and job discharged by them. This tribunal finds no reason of discarding the said diary. On the contrary it is held that the entries in the said diary were made during an undisputed point of time and clearly proves how during the relevant time period i.e. between 2000 to 2012, these workmen were working under the effective administrative control of the management which gives rise to a presumption of employer employee relationship which has not been rebutted by the management in this case. The plea of the management that the claimants were the employees of the contractor in absence of proof is rejected. This issue is accordingly answered in favour of the workmen.

ISSUE No.1 and 3

The grievance of the claimants is that they had worked for the management for 12 years without being paid the minimum wage. When they raised a genuine and lawful demand before the Labour Commissioner the management got annoyed and terminated their service w.e.f. 23.03.2012. The management had denied the alleged termination on the ground that when there was no employer employee relationship the question of termination doesn't arise. Both the witnesses examined as WW1 and WW2 in their oral statement have stated that the management orally terminated their service and at the time of termination neither any termination notice, notice pay, or termination compensation was paid. Not only that no show-cause notice was served nor any Domestic Enquiry was conducted against them before termination. Both the witnesses were cross- examined at length by the Ld. A/R for the management. But nothing substantial has been elicited to discredit their testimony.

Now it is to be examined if the said act of termination and not regularizing them in service by the management is illegal. Be it stated here that the evidence of the claimants have not been controverted by the management. While answering issue No.2 it has already been held that the workmen were working for the management and discharging their duty for the period between 2000 to 2012. In the case of **ONGC vs. ONGC contractual workers union** reported in 2008 LLR page 801 it has been held that in order to ascertain the status of the workmen the period of work rendered by him is also taken into consideration. In this case the workmen have stated that they were employees of the management and later illegally terminated their service.

The law is well settled that when the workman successfully establishes his relationship as a n employee of the management it is to be seen if the termination was made illegally. Reference can be made to section 25-F of the Act 1947 which precisely speaks that no workmen employed in any industry who has been in continuous service for not less than 1 year shall be retrenched unless and until the said workmen has been give one month notice in writing, or notice pay or retrenchment compensation. In this case in the written statement the management has taken a plea that no notice was required to be served since there was no employer employee relationship. This gives an impression that no notice was served. Thereby the management has admitted non compliance of the mandatory provision of section 25-F of the ID act. This act itself makes the order of termination illegal and not sustainable in the eye of law. Thus, the moot question which remains to be replied is what would be the relief that can be granted to the workmen once his termination is held to be illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of **Surendra Kumar Verma and Others vs. CGIT Delhi** had observed that

“Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages.”

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. But in the case of **G.M ONGC Silchar vs. ONGC Contractual Worker Union** reported in 2008 LLR 801 the Hon'ble Apex Court after giving due consideration to several observations in different

pronouncement which suggest that a workman who was put in 240 days of work or a contractual worker is not entitled automatically to be regularized, came to hold that in appropriate cases regularization can be ordered.

Here is a case where the workmen have prayed for a relief of reinstatement simpliciter by the management no.1. They have further stated that the work done by them were perennial in nature. While adducing evidence the workmen have successfully proved that for the relevant calendar year of their engagement they have completed 240 days of work and there by duly discharged the burden put on them to prove that during a calendar year they had discharged work for 240 days more (2006 SCC page 967, **municipal counsel Sujapur vs. surinder kumar** relied)

A question may come up regarding the regularization of casual or contractual employees against regular vacancies in view of the restriction imposed in the case of **Secretary of state karnatak vs. Uma devi reported in 2006) 4 SCC Page1**. In the said judgment the constitution bench of the Hon'ble Supreme Court have held that the appointment of the contractual employees and their regularization in service is not an automatic process but the case of Uma devi referred supra came to be discussed in a later judgment by the Hon'ble Supreme Court in the case of **Maharashtra SRTC vs. Casteribe Rajya Parivahan Karmchhari Sangathana (2009) 8 SCC Page 556**. In that judgment the issue before the Hon'ble Supreme Court was with regard to the jurisdiction of the industrial court to give status wages and all other benefits of permanency to the workman who had been serving for years as cleaners in the corporation in temporary capacity. Relying upon Uma Devi a plea was raised that granting of permanent status to the casual workers/daily wager was not sustainable in law. Repealing the aforesaid argument the supreme court in Para No. 32 and 33 of the judgment of Maharashtra SRTC observed as under:-

“32. The power given to the Industrial and Labour Courts under Section 30 is very wide and affirmative action mentioned therein is inclusive and exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

“33. The provisions of MRTU and PULP Act and the powers of Industrial Labour Courts provided therein were not at all under consideration in the case of Uma Devi. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of Industrial and Labour Courts under section 30 of the Act did not fall for adjudication or consideration before the constitution Bench”.

Again the Hon'ble Supreme Court in another case **Hari Nandan Prasad vs. employer I/R to management of Food Corporation of India and another reported in AIR 2014 SC 1848**, wherein the issue was as to whether the Labour Court Tribunal has the jurisdiction to order regularization of the workman was considered in the context of the provision of the Act and the decision of the constitution bench in the case of Uma Devi and the Hon'ble Court came to hold that the powers conferred upon the Industrial Tribunal/Labour Court under the ID Act are quite wide. The Act deals with industrial Disputes, provides for conciliation, adjudication, and settlements, and regulates the rights of the parties and the enforcement of the award and settlement. Not only that way back in the year 1950 in the case of **Bharat Bank Limited vs. Employees of Bharat Bank** reported in (1950) LLJ 921 The Hon'ble Supreme Court had observed:

“In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.”

In the above said background and on considering the different pronouncements of Hon'ble Apex Court, while reverting to the facts of the present case, the grievance of the claimants is that they were working as casual workers against the permanent vacancy and the nature of the duty discharged by them was perennial in nature. But the management in order to deprive them of their right of permanency and regularization illegally terminated their service. They have also pleaded that the principle of last come first go was not followed by the management which amounts to violation of the provision of 25-G of the ID Act. No valid reason has been assigned by the management in this regard.

Reliance has been placed on behalf of the workman in the case of **Mackinon Mackenzie & Co. Ltd. vs. Mackinon Employees Union** reported in **AIR 2015 SC 1373** and in the case of **Workman of Sudder Workshop of Jorehut Tea Co. Ltd. vs. Jorehut Tea Co. Ltd. reported in AIR 1980 SC 1454**. In these two judgments the Hon'ble Supreme court have held that last come first go is not an inflexible rule and extraordinary situation may justify variation. In such a case the management has to assign the reason for departure from the rule. In this case no explanation has been offered by the management as to why the juniors were allowed to continue whereas the present workman being the senior was terminated.

Hence, for the foregoing reasons it is concluded that the claimant/workmen were subjected to unfair labour practice by the management. There was a gross violation of the provision of Section 25-G of the ID Act. They having

discharged the duty perennial in nature, for more than 240 days in a calendar year, this tribunal while following the judgment of the Apex Court in the case of Hari Nandan Prasad referred supra feels it proper to exercise its jurisdiction to order the regularization of the workmen who were initially appointed as a casual workers and continued to work for 12 years and also worked for more than 240 days in the calendar years preceding to their termination. The issue is accordingly answered in favour of the workmen. Hence, ordered.

ORDER

The reference is accordingly answered. The management is directed to regularize the service of all the workmen/claimant as per the list annexed with this award against the post they were working w.e.f. the date of their termination i.e. 23.03.2012 with back wages at par with the regular employees of the BSNL in that cadre. The exercise of reinstatement of the workmen shall be completed within 3 months from the period when this award would become enforceable. The management is further directed to pay the arrear wage accrued in favour of the claimant/workmen within the above said 3 months period failing which the accrued amount shall carry interest @ 12% per annum from the date of accrual till final payment is made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

LIST OF WORKMEN

Sr. No.	Name & Father/husband's Name	Date of joining/year of joining	Designation
1.	Shri Narender Singh S/o Shri Govind Singh	01.08.2000	Line man
2.	Shri Mukesh Kumar S/o Shri Arjun Gupta	05.03.1998	Line man
3.	Aslam Shah S/o Bhura Shah	2000	Line man
4.	Shri Deepak Kumar S/o Shri. Arjun Gupta	01.10.2000	Line man
5.	Shri Virender Singh S/o Shri. Govind Singh	10.10.2000	Line man
6.	Shri Subhash Chauchan S/o Shri Guman Singh Chauchan	15.05.2002	Line man

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2022

का.आ. 1022.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रबंधक, सेंट्रल इलेक्ट्रॉनिक्स लिमिटेड, साहिबाबाद, गाजियाबाद (यू.पी.) के प्रबंधन के संबद्ध नियोजकों और श्री विजय कुमार, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2 नई दिल्ली के पंचाट(संदर्भ संख्या 121/2012) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 11.10.2022 को प्राप्त हुआ था।

[सं. एल- 42012/32/2012- आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th October, 2022

S.O. 1022.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 121/2012) of the Central Government Industrial Tribunal-cum-Labour- II New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Central Electronics Ltd., Shahibabad, Ghaziabad (U.P) and Shri Vijay Kumar, Worker, which was received along with soft copy of the award by the Central Government on 11.10.2022.

[No. L- 42012/32/2012 - IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI**

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 121/2012**Date of Passing Award- 22nd August, 2022****Between:**

Shri Vijay Kumar,
S/o Shri Indraj Singh,
R/o 190, Pasonda,
Ghaziabad (U.P).

... Workman

VERSUS

The General Manager,
Central Electronics Ltd.,
4, Industrial Area, Shahibabad,
Ghaziabad (U.P).

... Management

Appearances:-

Shri Ashutosh Mishra (A/R) : For the Workman

Shri Raj Kumar (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Central Electronics Ltd., and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 42012/32/2012 (IR(DU)) dated 09.07.2012 to this tribunal for adjudication to the following effect.

“Whether the action of the management of CEL in terminating services of workman Shri Vijay Kumar w.e.f 29.09.2010 without complying with provisions of 25N is illegal and unjustified? If so, what relief he is entitled to?”

As per the claim statement the claimant was appointed as a helper in the establishment of the management i.e. Central Electronics Limited w.e.f June 1992. During this employment he was discharging his duty with dedication giving no scope of complaint to anybody. On 07.09.2010 while on duty he met with an accident and his hand came in contact with a machine which damaged one finger of his right hand. He was taken to hospital immediately and received treatment. Intimation being given about the accident to the management he was assured that his service will be resumed once he gains full fitness. On 24.09.2010 when he reported for duty, the management refused to accept him and his demand for payment of the treatment expenditure was also turned down. After 24.09.2010 he contacted the management several times with a request to allow him to join the duty. But no action was taken. Finding no other way he approached the conciliation officer by filing a claim statement. It was alleged that he was working for the permanent nature of post and had completed 240 days of work in a calendar year. But the management while terminating his service did not follow the procedure laid down under the ID Act nor the provision of section 25N was complied. Hence, he prayed before the conciliation officer for reinstatement with full back wages and continuity of service. But the conciliation failed and the appropriate government referred the matter for adjudication.

Being noticed the management appeared and filed written statement challenging the claim on factual as well as on legal grounds. The stand taken by the management is that the claim is not maintainable for want of espousal as it is an individual dispute. Furthermore, the management has stated that there exists no relationship as employer and employee between the management and the claimant. The management had outsourced some service to a contractor named Sybex Computer System Pvt. Ltd. and the said contractor had deployed employees in the premises of the management including the claimant Vijay Kumar. The said contractor on 29.10.2010 had intimated that the claimant Vijay Kumar resigned from the employment w.e.f 29.10.2010 on receiving all his dues towards full and final settlement. Thus, the management has stated that the claim advanced by the claimant alleging illegal termination and praying reinstatement is false, baseless and liable to be rejected.

On these rival pleadings a following issues were framed for adjudication.

ISSUES

1. Whether there exists employer and employee relationship between the parties.
2. As in terms of the reference.

The claimant testified as WW1 and proved the documents marked in a series of WW1/1 to WW1/5. These documents include the copy of the notice served on the management the original bank pass book of the claimant photocopies of the medical document, photocopy of the ID Card and entry pass. On the other hand the management examined one Mr. Rajat Garg the AGM (HR) of the management and filed documents marked as MW1/1 which is the correspondence received from the contractor with regard to the claimant. The management also filed a number of documents which are photocopies and thus, made a prayer to summon the Director of M/s Sybex Computer System Pvt. Ltd. to produce the originals of the document filed by the management. In response thereto the Director of the Company testified as MW2 and filed a series of documents which are certified true copies and marked as MW2/1 to MW2/10.

At the outset of the argument the Ld. A/R for the workmen submitted that the claimant had worked for the management from June 1992 to 07.09.2010 and had completed 240 days in the preceding calendar year. In view of the same the management while terminating his service should have complied the provisions of section 25F of the ID Act. The counter argument of the Ld. A/R for the management is that the proceeding suffers from non joinder of parties as the contractor was never added. Moreover, the claimant was neither appointed by the management nor ever his service was terminated. In such a situation compliance of the provisions of section 25F of the ID act was not required. He also pointed out that the documentary evidence placed by the management clearly proves that the claimant was an employee of M/s Sybex Computer Pvt. Ltd. and had resigned from the service of the said contractor after meeting with an accident and at the time of resigning had received all his dues towards full and final settlements from his employer i.e the contractor. He also argued that man may lie but not the documents. In this case since, the documents relating to claimants resignation and receipt towards full and final settlement were created during an undisputed point of time, the tribunal should consider the same and dismiss the claim petition.

FINDING

ISSUE No.1

This is the most important issue to be decided in this proceeding. Since the finding on this issue is likely to impact the finding on the other issues. In the case of **Ram Singh and Others vs. Union Territory of Chandigarh and others reported in (2004)1 SCC Page 126** it has been held that for determination of employer and employee relationship the factors to be considered inter alia are:

1. Control
2. Integration
3. Power of Appointment and dismissal
4. Liability to pay remuneration
5. Liability to organize the work
6. Nature of mutual obligation etc.

The factual matrix of the present dispute as evident from the oral and documentary evidence is that the claimant was working as a helper in the premises of the management since the year 1992. Whereas the claimant claims that he was working in the said post continuously from 1992 to 2010 no evidence to prove the same has been adduced. It is also a decided Principle of Law that the party who asserts this employer and employee relationship bears the burden of proving the same. But in this case the claimant has not adduced any evidence to prove this aspect. The only evidence adduced by him is the passbook which contains an entry dated 27.11.2008 under which 3927/- was deposited in the account of the claimant by the management Central Electronics Ltd. The management on the contrary has explained by producing a document which is a money receipt marked as A/1 to say that Vijay the claimant was a labour job contractor and was given the work order to maintain 140 water coolers in the office of the management at the rate of Rs. 30 per cooler. In that respect Rs. 4200/- was payable to the claimant and after deduction of tax Rs. 3927/- was deposited in his bank account. Similarly there is absolutely no evidence, oral or documentary available on record to presume that the management was exercising control on the claimant for integration of the work allegedly done by him. There is also no material on record that the claimant was getting monthly remuneration from the management like its regular employees. No attendance register in acknowledgment of his daily attendance for his duty has been filed. The mutual obligation in the nature of deducting PF subscription and extension of other benefits by the management is no way evident from the documents filed by the claimant. Mere production of a bank passbook containing only one entry showing deposit by the management will not lead to a presumption that the claimant was the employee of the management and getting salary/wage from it.

On the other hand the management has produced and proved through the MW2 certain documents. These are the documents which were produced as attested true copies by the Director of Sybex Computer. The documents include the ESI temporary identity certificate issued to the claimant wherein the name of his employer has been mentioned as Sybex Computer System this document marked as MW2/2 was issued on 07.09.2010 i.e before the

alleged termination of service on 24/09/2010. Another document is exhibit MW2/3 which is Form 12 i.e the accident report. This is a document issued by the employer to ESI Corporation intimating the accident met by the employee during course of employment. Which bears the evidence that the claimant was the employee of M/s Sybex Computer Pvt. Ltd. and not of the management Central Electronics Ltd. MW2 has filed two other documents marked as MW2/6 and MW2/7. MW2/6 is a letter issued by the manager of ESIC to the employer asking to produce some documents in respect of the accident case of the claimant. MW2/7 and MW2/8 are the documents evidencing of receipt full and final settlement and resignation letter dated 29.10.2010 submitted by the claimant. During course of cross examination the claimant has admitted his signatures on these two documents. Thus, on a conjoint reading of the oral and documentary evidence it is clearly evident that the claimant was an employee of the contractor i.e. Sybex Support Service Pvt. Ltd. and there never existed any employer and employee relationship between the management and the claimant as the evidence on record no way proves that the claimant was getting monthly remuneration from the management and the management was having supervision and control over the claimant for integration of the work. The management had never issued any appointment letter to him. Accordingly it is held that there existed no employer and employee relationship between the claimant and the management. Issue No.1 is accordingly decided against the claimant.

Issue No.2

The reference has been received to decide if the termination of the service of the workman by the management is illegal for not complying with the provisions of 25N of the Id Act. But as stated in the preceding paragraph the management was never the employer of the claimant. On the contrary the evidence produced by the management through MW2 clearly proves that the claimant had voluntarily resigned from the service under the contractor and left after receiving full and final settlement. In that view of the matter this issue is decided against the claimant and he is held not entitled to the relief sought for in this claim petition. Hence, ordered.

ORDER

The reference be and the same is accordingly answered against the claimant and it is held the claimant is not entitled to the relief sought for. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 19 अक्टूबर, 2022

का.आ. 1023.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हांगकांग और शंघाई बैंकिंग निगम के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एर्नाकुलम के पंचाट (संदर्भ सं. 233/2011) को प्रकाशित करती है।

[सं. एल-12012/74/2010-आई आर (बी-1)]

ए. के. यादव, अवर सचिव

New Delhi, the 19th October, 2022

S.O. 1023.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 233/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court –II Delhi as shown in the Annexure, in the industrial dispute between the management of Hong Kong and Shanghai Banking Corporation and their workmen.

[No. L-12012/74/2010– IR(B-1)]

A. K. YADAV, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
NEW DELHI**

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 233/2011

Date of Passing Award- 01.08.2022

Between:

Shri Chetan Khandpal,
2148, Indira Nagar,
Lucknow -226016.

... Workman

Versus

The Chief Executive Officer,
Hong Kong and Shanghai Banking Corporation (HSBC)
M. G Road, P.O Box 128,
Mumbai-400001.

... Management

Appearances:-

Shri Pradeep Saini (A/R) : For the claimant

Shri Sanjay Gupta (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Hong Kong and Shanghai Banking Corporation (HSBC), and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12012/74/2010 (IR(B-I) dated 24/05/2011 to this tribunal for adjudication to the following effect.

“Whether the action of the management of Hong Kong and Shanghai Banking Corporation (HSBC) Ltd. New Delhi in terminating the services of Shri Chetan Khandpal, Ex Relationship Manager, Consumer Finance W.e.f 22/05/2009, is legal and justified? To what relief he workman is entitled to?”

The claimant in the claim statement filed, has stated that he started working with the management Bank as a Relationship Manager, consumer finance, with effect from 06/08/2007 as per the job offer letter accepted by him. His first place of posting was Lucknow. The management decided to shut its Lucknow office and worked out a plan to throw the claimant out of the system. Another reason behind the same was the pro active nature of the claimant in bringing the misdeeds of some senior employees to the fore front. When he was discharging his duties with utmost sincerity, suddenly the management on 20/08/2008 took a decision that the claimant for his underperformance shall be put under the Performance Improvement Plan (PIP). Before that, in the middle of July 2008, the claimant was forced to resign, but he did not accede to the pressure. After putting him under PIP, in the month of Nov 2008, he was transferred to Delhi Office at an entry level position and was asked to perform the job of tele-calling and cold calling in the market. That created tremendous dissatisfaction in his mind making him unable to perform at his best. He took up the matter with the appropriate authorities requesting change in his job profile and several e mail communications in this regard were made. Finally the management on 22nd May 2009 served a notice of termination from service on him and with immediate effect discharged him from service. At that time a cashier order for Rs 98,550/- drawn in his favour was handed over to him. He accepted the same under protest and without prejudice to his claim. Having realized that he has been made a victim of the situation for the pro activeness shown in unveiling the misdeeds of some seniors, he served a legal notice on the management on 11.11.2009 and also raised a dispute before the labour commissioner and the matter was referred to this Tribunal for adjudication. In the claim petition the claimant has further pleaded that the action of the management in terminating his service illegally in gross violation of the provisions of ID Act and replying vaguely to the legal notice has given rise to the cause of action for raising this dispute. Thereby the claimant has prayed for an award to be passed setting aside the illegal order of termination and direct the management to reinstate him in to service with full back wages from the date of such Termination and all consequential benefits.

In reply the management has denied all the allegations leveled by the claimant leading to his termination which he describes as illegal. The main objection taken by the management is that the claim is not maintainable as the claimant is not a workman as defined u/s 2(s) of the ID Act. He as per his own averments in the claim petition, was initially appointed as the Relationship manager consumer finance in band 7 vide appointment letter 06/08/2007 accepted by him on 13.08.2007 and posted in the office at Lucknow. A contract of employment was executed

between the management and the claimant. As per the condition stipulated in the said contract the management reserves the right of terminating the service of the employee after giving a three month notice or notice pay for such period, the in lieu of the notice. The claimant for his under performance was offered to undergo a performance improvement programme where he had ample opportunity of up grading and improving his performance. He was then transferred to Delhi office and closure of the Lucknow office has nothing to do with his transfer. In Delhi he was asked to perform the duties as the Senior Premier Sales Associate drawing monthly emoluments of more than 32,850/- but in his new position too he could not perform up to the set Targets, leaving the management with no other option than terminating his service as per the term and contract of employment. On 22.05.2009 he was served with the order of Termination along with a cheque of Rs. 98,550/- which was equal to his three months salary and the same was given as notice pay in lieu of three month notice. The claimant accepted the same without protest and later encashed the same. After a considerable time gap he served a legal notice on the management and raised an industrial dispute. Before the labour commissioner the management took the stand that the claimant was appointed as a relationship Manager in Lucknow and on his Transfer to Delhi as a part of PIP, he was working as the senior premier sales associate. In both the positions he was in band 7 which as per the Banks service condition was an officer cadre. At Lucknow he was a Manager, apart of the management Team and in Delhi he was in the supervisor grade looking over and monitoring the work of hiring team to source customers. In Delhi though he was asked to work for a different role his salary etc remained unchanged. Rather, Delhi being a tier 2 city his total emoluments was increased by increase in allowances. While denying that his service was illegally terminated as he came out to be a whistle blower, the management has stated that the claimant had raised some false allegations against some officers of the Bank which were found to be baseless after an in house inquiry. Thus the management has pleaded that the claim is liable to be answered against the claimant as he is not a workman as per sec 2(s) of The ID Act and no illegality was committed in terminating his service for his performance below the expected standard. The said Termination can not be termed as Retrenchment.

On these rival pleadings the following issues were framed for adjudication.

1. Whether the claimant is not the workman within the meaning of sec 2(s) of the ID Act.
2. Whether the Termination of claimant's service amounts to retrenchment defined u/s 2(oo) of the ID Act.
3. As in terms of reference.
4. Relief.

The claimant examined himself as ww1 and filed documents which have been exhibited in a series as ww1/1 to ww1/12. These documents include the appointment letter of the claimant containing the terms and conditions of service, the termination letter, one compact disc containing the conversation between the claimant and authorities of the Bank, the Transfer order dated 08.10.2008, several e mail correspondence in which the claimant had requested for change of his job profile, the legal notice served on the Respondent before raising the Industrial Dispute and the reply given by the management. Similarly the Management examined its vice president Employee Relation as MW1, who, besides testifying orally, also proved the documents marked as Ext MW/1. The management also confronted some documents to the claimant during cross examination, which were marked as WW1/M1 to WW1/M4.

At the outset of the argument the learned AR for the management argued that while framing of issue they had prayed for a preliminary issue hearing on the maintainability as the claimant is not a workman. But this Tribunal took a view that the issue can be considered along with other issues.

Perusal of the Record shows that earlier an award was passed on 14/06/2017 wherein it was held that the claimant is a workman and the order of termination was illegal. With such finding the Tribunal passed the award directing reinstatement of the claimant with back wages. But the award was challenged by the Respondent Bank in WPC No 9755/2017 and the Hon'ble Court by order dated 25/09/2019 passed the order setting aside the said award directing re consideration.

The learned AR for the claimant argued that the management since has disputed the status of the claimant as a workman, the burden is on him to prove the same and management has failed to prove the same. The oral and documentary evidence filed by the claimant very well proves the status of the claimant as a work man. He urged for deciding the maintainability in favour of the claimant.

FINDING

ISSUE No. 1

The claimant has described himself as a workman for raising the Industrial Dispute which has been objected to by the management. The stand of the management in this regard is that the claimant was initially appointed as a relationship manager of consumer finance at Lucknow and transferred to Delhi for a new position as Senior Premier Sales Associate. His basic salary for both the positions per month was 32,850/- with admissible allowances. He was discharging his duties as a manager and at the time of termination of service he was the supervisor and leading a team

of outsourced and calledas hiring team. Hence, he does not fall under the definition of workman as defined u/s 2(s) of the Act.

Sec2(s) reads as follows

“workman means any person (including an apprentice) employed in any industry to do any manual, skilled, unskilled, technical, operational, clerical or supervisory work for hire or reward, whether the term of employment be express or implied, and for the purpose of any proceeding under this Act, in relation to an Industrial Dispute, includes any such person who has been dismissed, discharged retrenched in connection with, or as a consequence of that dispute, but does not include any such person

(1) ****

(2) ****

(3) who is employed mainly in a managerial administrative capacity, or

(4) who being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

The admitted facts are that the claimant was initially appointed as Relationship Manager in Lucknow and subsequently transferred to Delhi for a new position i.e senior premier sales associate. Where as the management alleges that both the positions are managerial and supervisory in nature, the claimant has stated that at the time of his termination, i.e when the cause of action arose he was discharging the function of no more than a clerk, a lower functionary. Hence he very well falls within the definition of workman.

Since the management of this proceeding has disputed the status of the claimant as a workman, the burden lies on the management to prove the fact asserted and the burden then shifts on to the claimant to disprove the same. The management in order to discharge the burden has adduced both oral and documentary evidence. The witness for the management, who is the Vice president, employees Relation has stated that the claimant was appointed as Relationship Manager in Lucknow and transferred to Delhi as senior premier sales associate and worked in that capacity till the date of termination of his service. By filing the document marked as Ext W1/M1 and Ext WW1/M2, which contains the job description and a part of the contract of employment, the witness has stated that the claimant was discharging the job of a manager only and in Delhi he was leading a team and his basic salary ,then was more than 10,000/- per month. The witness has also exhibited a comparative chart of the benefits and allowances paid to clerical staff and managerial staff. The claimant being confronted with the documents during cross examination admitted the same to be the job description attached to his contract of employment. He also admitted during cross examination that all the officers of the Bank are given a band in terms of their seniority and usually the officers get Band 7. He was appointed in Band 7. There is no evidence placed on record that the pay band of the claimant was changed when he was re located to Delhi in a different Role. On the contrary the oral evidence of MW1 reveals that the basic salary remaining unchanged, the gross salary of the claimant increased in Delhi as the allowances paid in Delhi a tier 2 city are more in comparison to Lucknow, a tier 3 city. This evidence has remained un rebutted.

In the pleading and oral statement the claimant stated that irrespective of the job description in the contract of employment, he was discharging the job of a lower functionary and at the time of termination he was no better than a clerk whose job was to make tele- calling and cold calling an entry level job. Few e mail correspondence made by the claimant ventilating his dis satisfaction has been placed on record. The learned AR for the claimant by placing reliance in the case of **Anand Bazar Patrika (p) Ltd vs. Workman(1970)3 SCC 248** argued that the words managerial, administrative or supervisory are not synonyms to each other. In the case of Anand Bazar Patrika, the Hon`ble SC have held that:-

“the question whether the a person is employed in a supervisory capacity or on a clerical work, in our opinion depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature of work carried out by a clerk. If a person mainly doing supervisory work, but, incidentally or for a fraction of time also does some clerical work it would have to be held that he is employed in supervisory capacity, and conversely, if the main work done is of clerical nature, he can not be said as employed in a supervisory post”

The learned AR for the claimant thereby argued that the management since admitted that after relocation to Delhi, the main job of the claimant being Tele calling and cold calling , it is proved that he was in the entry level job band and a workman under the definition of sec 2(s) of The Act.

The reply argument of the management is that the job description given in the transfer order describes his primary duty and any other work done by him was ancillary to his primary job. His job band having not been changed at the time of transfer, the claimant that he had joined in an entry level post in Delhi can not be accepted. The job description provided to the claimant, when he was placed under PIP, has been filed and marked as EXT WW1/M2 and

WW1/M3. These documents show that the primary job of the claimant in his new position would be to acquire quality premier relationship for HSBC among others and to execute marketing events and promotions to generate business as a part among other responsibilities. The number of non executive staff to report him during this position has been mentioned as 3 to 5. The claimant during cross examination has also admitted the same. The learned AR for the management Bank by placing reliance in the case of Standard Chartered Bank vs. Vandana Joshi & another pronounced by the Hon'ble High Court of Bombay, (WP No 975/2009, decided on 17.12.2009) submitted that the Hon'ble Court having taken note of the shift in the Managerial Responsibility in an organization on account of Team work and other methods introduced, have held that:-

“burden lies on the person who asserts the status of a workman under sec 2(s) to establish with reference to the dominant nature of the duties the workman performs, falls in one of the stipulated category in sec 2(s). The court must have regard to the dominant nature of the work or duties assigned. Work which was assigned to the first Respondent clearly shows that she was intrinsically associated with the provision of a high level customer service of the Bank. While doing such work, the employee had to do incidental work including doing with her banking request, request for closure of accounts etc. the over all nature of duty assigned was not of clerical nature”

The facts of the case of Standard Chartered Bank referred supra is identical to the case of the claimant and the principle decided is the same as was held by the Hon'ble SC in the case of Anand Bazar Patrika referred supra. Thus it is concluded that the claimant was discharging the function of relationship manager in Lucknow and on relocation to Delhi as a step towards PIP, his position was Premier Sales Associate and any incidental work done by him can not change the nature of his primary duties. More over when his pay Band 7, granted to the officers of the Bank was not changed through out his employment he can not claim that he was not discharging managerial or supervisory function at the time of the alleged illegal termination of service. Thus it is held that the claimant has not succeeded in disproving or , rebutting the evidence adduced by the management which proves that the claimant, not being a workman as defined u/s 2(s) Of The ID Act , has raised this dispute and thus the proceeding is not maintainable. The issue is accordingly answered against the workman.

ISSUE No. 2&3

The claimant has challenged the termination as illegal mainly on the ground of non compliance of the provisions of sec 25F of the ID Act. He has also alleged about the unfair labour practice meted to him and he falling to a victim of the illegal activities going in the management tried to be brought to the fore front. Several e mail communications in this regard has been placed on record. In the pleading and in the oral evidence he has stated about the pressure created on him for resignation for his proactive attitude to expose the illegality. The management has denied all the allegations and stand taken by the claimant. It has been pleaded that some allegations were made by the claimant against the management and those were duly investigated and found to be baseless. The management witness has added that the claimant, without waiting for the result of the in house investigation was making e mail correspondence and those have been placed on record. Those documents have no relevancy with the alleged termination.

The claimant has stated that for the grudge borne against him and for closure of Lucknow office management hatched a plan to remove him from service and held him as an under performer though he was discharging his duties with utmost sincerity. He was illegally placed under PIP. In reply the management has stated that the underperformance was brought to the notice of the claimant time and again and the performance improvement plan was discussed with the claimant. With his agreement, he was relocated to Delhi for a new Role. The bonafides of the management is proved from the fact that the claimant, for the under performance was not removed from service and offered a chance for self improvement. While going through the PIP his salary and other emoluments were not changed. Since the claimant could not perform up to the expected standard in his new role, the management had no other option than terminating his service. While terminating the condition of employments were scrupulously followed and at that time the claimant had not raised any objection. Thus, there was noneed of complying the provisions of sec 25F of the ID Act.

Management as well as the claimant have pleaded that the notice of termination vide Ext WW1/2 was served on the claimant on 22nd May 2009 and i.e. that date, the service of the claimant was terminated. It is also admitted by both the parties that on that date a cheque of Rs 98,550/- as mentioned in the notice Ext WW1/2 was given to the claimant. The management has stated that the said amount was given towards three months pay in lieu of three month notice as mentioned in the contract of employment. The management has placed the job offer letter dated 6th August 2007 on record which was on record which contains the Terms and conditions of employment as enclosure. The claimant has not denied the contents of the document. As per the said Terms and conditions, either party to the contract of employment, can terminate the contract either by giving three months notice or three months salary in lieu of the notice. The claimant during cross examination admitted that the cheque for Rs 98,550/- given along with the notice of Termination was equal to his three months salary and the same was paid in terms of his employment contract. Of course the claimant stated that he received the same under protest. No document with regard to the protest has been placed on record. Rather the evidence suggests that the cheque was encashed by the claimant in time.

Now the question for a decision is if payment of three month salary would stand for compliance of the provisions of sec 25 F of the ID Act? The learned AR for the claimant argued that the meaning of retrenchment given in sec 2(oo) is wide to include all termination for whatever reason may be except termination by way of punishment in disciplinary action, voluntary retirement and retirement on superannuation. For all other act of termination the act amounts to retrenchment and makes it mandatory for the employer to comply the provisions of sec 25F of the Act. The said provision having not been complied in case of the claimant, the termination is illegal and liable to be set aside and the claimant is entitled to the relief of reinstatement.

In this case admittedly sec 25 F was not complied. On behalf of the management reliance has been placed in the case of Manju Saxena vs. Union of India, decided by the Hon'ble SC in civil appeal no 11766-11767/2018 by order dated 3rd December 2018, wherein by relying upon the earlier judgments of the Hon'ble Apex Court in the case of Gurmail Singh & others vs. state of Punjab(1991) 1 SCC 189 and Pramod Jha & others vs. State of Bihar & Others (2003) 4 SCC 619, have held that compliance of sec 25F is not mandatory when a sum as per the contract is paid in lieu of the notice u/s 25F of the Act. Hence it is held that the termination of service of the claimant on account of his under performance after paying him three month salary in lieu of three month notice as stipulated in the contract of employment can not be termed as illegal termination of service.

Accordingly it is held that the claimant is not entitled to the relief of reinstatement with back wages as prayed by him. Issue no 2&3 are accordingly answered against the claimant. Hence, ordered.

ORDER

The reference be and the same is w answered against the claimant and he is held not entitled to the relief sought for in this proceeding. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2022

का.आ. 1024.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दिल्ली इंटरनेशनल एयरपोर्ट प्रा- लिमिटेड; सोडेक्सो टेक्निकलस सर्विसेज इंडिया प्रा- लिमिटेड और ओसीएस ग्रुप यूके फैसिलिटी मैनेजमेंट सर्विसेज के प्रबंधन के संबंध में नियोजकों और श्री सुरेंद्र कुमार, थ्रू- हिंदुस्तान इंजीनियरिंग एंड जनरल मजदूर यूनियन, दिल्ली बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली पंचाट (संदर्भ संख्या (159/2019) को प्रकाशित करती है।

[सं. जेड-16025/04/2022-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 20th October, 2022

S.O. 1024.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. (159/2019) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Delhi International Airport Pvt. Ltd; Sodexo Technicals Services India Pvt. Ltd. and OCS Group UK Facility Management Services and Shri Surender Kumar, Through- Hindustan Engineering and General Mazdoor Union, Delhi.

[No. Z-16025/04/2022-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 159/2019**Date of Passing Award- 21.08.2022****Between:**

Shri Surender Kumar,
S/o Shri Deshram,
R/o-384, Solanki Mohalla Shahbad Mohamadpur, New Delhi-110061.
Through- Hindustan Engineering and General Mazdoor Union,
Head Office:- D-2/24, Sultanpuri, Delhi-110086.

... Workman

Versus

1. Delhi International Airport Pvt. Ltd.,
Terminal-3, IGI Airport, New Delhi-110037.
2. Delhi International Airport Pvt. Ltd.,
D-17, Pushpanjali Guest House, Link Road Dwarka, New Delhi-110061.
3. Sodexo Technicals Services India Pvt. Ltd.,
B-21, IInd & IIIrd-Floor, Sector-58, Noida UP.
4. OCS Group UK Facility Management Services,
Omega Chamber-1/3, Rawandsa Road, Gurgaon

... Managements

Appearances:-

Claimant in person (A/R) : For the claimant

Shri Digvijay Rai, Manish Sehrawat (A/R) : For the Management No.1 and 2

Shri B. K. Singh : For the management No.3.

AWARD

The matter was taken up today for conciliation before the bench during National Lok Adalat. The A/R for the claimant is present. On behalf of management no.3 the authorized representative has given a statement that the dispute between the claimant and the management no.3 has been amicably resolved and as a step of settlement the management no.3 has paid Rs. 32321/- vide cheque no. 035036/- dated 12.03.2020 to the claimant which he received towards full and final settlement of his claim including the claim for reinstatement, back wages and other consequential benefits. A joint application duly signed by both the parties has been placed on record. In view of the same the dispute stands settled and the proceeding stands disposed of in the Lok Adalat by way of conciliation. The record be consign as per rules.

21/08/2022

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2022

का.आ. 1025.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स नेशनल इन्श्योरेंस कंपनी लिमिटेड, नई दिल्ली के प्रबंधन के संबद्ध नियोजकों और श्री विनोद, श्रू- औद्योगिक क्रांतिकारी कर्मचारी यूनियन, नई दिल्ली बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली पंचाट (संदर्भ संख्या (171/2020) प्रकाशित करती है।

[सं. एल-17011/4/2020-IR(M)]

आशीष यादव, अवर सचिव

New Delhi, the 20th October, 2022

S.O. 1025.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. (171/2020) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s National Insurance Company Limited, New Delhi and Shri Vinod, Through Audyogik Krantikari Karamchhari Union, New Delhi.

[No. L-17011/4/2020-IR(M)]

ASHISH YADAV, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—CUM- LABOUR COURT-II, NEW DELHI****Present:** Smt. Pranita Mohanty**ID.NO.171/2020**

Shri Vinod,
S/o Surje,
Through Audyogik Krantikari Karamchhari Union,
Regd., 3232, F-308, Karampura, New Delhi-110015.

... Workman

Versus

M/s National Insurance Company Limited,
B-18, B-1 Janakpuri, New Delhi-110058.

... Management

AWARD

In the present case, a reference was received from the appropriate Government vide reference No. L-17011/4/2020 IR(M) dated 20/10/2020 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

“Whether the services of Sh. Vinod S/o Sh. Surje have been terminated illegally and /or unjustifiably by the management National Insurance company ? and if yes to what relief is he entitled and what directions are necessary in this regard?”

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file the claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the management. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained unserved in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2022

का.आ. 1026.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दिल्ली इंटरनेशनल एयरपोर्ट प्रा- लिमिटेड; सोडेक्सो टेक्निकलस सर्विसेज इंडिया प्रा- लिमिटेड और ओसीएस ग्रुप यूके फैसिलिटी मैनेजमेंट सर्विसेज के प्रबंधन के संबद्ध नियोजकों और श्री विपिन कुमार, श्रू- हिंदुस्तान इंजीनियरिंग एंड जनरल मजदूर यूनियन, दिल्ली बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली पंचाट (संदर्भ संख्या (158/2019) प्रकाशित करती है।

[सं. जेड-16025/04/2022-IR(M)]

आशीष कुमार यादव, अवर सचिव

New Delhi, the 20th October, 2022

S.O. 1026.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 158/2019) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Delhi International Airport Pvt. Ltd; Sodexo Technicals Services India Pvt. Ltd. and OCS Group UK Facility Management Services and Shri Vipin Kumar, Through- Hindustan Engineering and General Mazdoor Union, Delhi.

[No. Z-16025/04/2022-IR(M)]

ASHISH KUMAR YADAV, Under Secy.

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
NEW DELHI**

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 158/2019

Date of Passing Award- 21.08.2022

Between:

Shri Vipin Kumar,
S/o Shri Mukesh Sharma,
R/o-384, Solanki Mohalla Shahbad Mohamadpur, New Delhi-110061.
Through- Hindustan Engineering and General Mazdoor Union,
Head Office:- D-2/24, Sultanpuri, Delhi-110086.

... Workman

Versus

1. Delhi International Airport Pvt. Ltd.,
Terminal-3, IGI Airport, New Delhi-110037.
2. Delhi International Airport Pvt. Ltd.,
D-17, Pushpanjali Guest House, Link Road Dwarka, New Delhi-110061.
3. Sodexo Technicals Services India Pvt. Ltd.,
B-21, IInd & IIIrd-Floor, Sector-58, Noida UP.
4. OCS Group UK Facility Management Services,
Omega Chamber-1/3, Rawandsa Road, Gurgaon

... Managements

Appearances:-

Claimant in person (A/R) : For the claimant
Shri Digvijay Rai, Manish Sehrawat (A/R) : For the Management No.1 and 2
Shri B K Singh : For the management No.3.

AWARD

The matter was taken up today for conciliation before the bench during National Lok Adalat. The A/R for the claimant is present. On behalf of management no.3 the authorized representative has given a statement that the dispute between the claimant and the management no.3 has been amicably resolved and as a step of settlement the management no.3 has paid Rs. 36140/- vide cheque no. 034256/- dated 03.09.2019 to the claimant which he received towards full and final settlement of his claim including the claim for reinstatement, back wages and other consequential benefits. A joint application duly signed by both the parties has been placed on record. In view of the same the dispute stands settled and the proceeding stands disposed of in the Lok Adalat by way of conciliation. The record be consign as per rules.

21.08.2022

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2022

का.आ. 1027.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दिल्ली इंटरनेशनल एयरपोर्ट प्रा- लिमिटेड; सोडेक्सो टेक्निकलस सर्विसेज इंडिया प्रा- लिमिटेड और ओसीएस ग्रुप यूके फैसिलिटी मैनेजमेंट सर्विसेज के प्रबंधन के संबंध में नियोजकों और श्री रमन सैनी, थ्रू- हिंदुस्तान इंजीनियरिंग एंड जनरल मजदूर यूनियन, दिल्ली बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली पंचाट (संदर्भ संख्या (160/2019) प्रकाशित करती है।

[सं. जेड-16025/04/2022-IR(M)]

आशीष यादव, अवर सचिव

New Delhi, the 20th October, 2022

S.O. 1027.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 160/2019) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Delhi International Airport Pvt. Ltd; Sodexo Technicals Services India Pvt. Ltd. and OCS Group UK Facility Management Services and Shri Raman Saini, Through- Hindustan Engineering and General Mazdoor Union, Delhi.

[No. Z-16025/04/2022-IR(M)]

ASHISH YADAV, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
NEW DELHI**

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 160/2019**Date of Passing Award- 21.08.2022****Between:**

Shri Raman Saini,
S/o Shri Tejveer Saini,
R/o-VPO Shahbad Mohamadpur, Near Solanki Computer,
Near Shiv Mandir, New Delhi-110061.
Through- Hindustan Engineering and General Mazdoor Union,
Head Office:- D-2/24, Sultanpuri, Delhi-110086.

... Workman

Versus

1. Delhi International Airport Pvt. Ltd.,
Terminal-3, IGI Airport, New Delhi-110037.
2. Delhi International Airport Pvt. Ltd.,
D-17, Pushpanjali Guest House, Link Road Dwarka, New Delhi-110061.
3. Sodexo Technicals Services India Pvt. Ltd.,
B-21, IInd & IIInd-Floor, Sector-58, Noida UP.
4. OCS Group UK Facility Management Services,
Omega Chamber-1/3, Rawandsa Road, Gurgaon

... Managements

Appearances:-

Claimant in person (A/R)	: For the claimant
Shri Digvijay Rai, Manish Sehrawat (A/R)	: For the Management No.1 and 2
Shri B K Singh	: For the management No.3.

AWARD

The matter was taken up today for conciliation before the bench during National Lok Adalat. The A/R for the claimant is present. On behalf of management no.3 the authorized representative has given a statement that the dispute between the claimant and the management no.3 has been amicably resolved and as a step of settlement the management no.3 has paid Rs. 56342/- vide cheque no. 034255/- dated 03.09.2019 to the claimant which he received towards full and final settlement of his claim including the claim for reinstatement, back wages and other consequential benefits. A joint application duly signed by both the parties has been placed on record. In view of the same the dispute stands settled and the proceeding stands disposed of in the Lok Adalat by way of conciliation. The record be consign as per rules.

21/08/2022

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2022

का.आ. 1028.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दिल्ली इंटरनेशनल एयरपोर्ट प्रा- लिमिटेड; सोडेक्सो टेक्निकलस सर्विसेज इंडिया प्रा- लिमिटेड और ओसीएस ग्रुप यूके फैसिलिटी मैनेजमेंट सर्विसेज के प्रबंधन के संबद्ध नियोजकों और श्री मुकेश कुमार, थू- हिंदुस्तान इंजीनियरिंग एंड जनरल मजदूर यूनियन, दिल्ली बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ सं. 161/2019) प्रकाशित करती है।

[सं. जेड-16025/04/2022-IR(M)]

आशीष यादव, अवर सचिव

New Delhi, the 20th October, 2022

S.O. 1028.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 161/2019) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Delhi International Airport Pvt. Ltd; Sodexo Technicals Services India Pvt. Ltd. and OCS Group UK Facility Management Services and Shri Mukesh Kumar, Through- Hindustan Engineering and General Mazdoor Union, Delhi.

[No. Z-16025/04/2022-IR(M)]

ASHISH YADAV, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
NEW DELHI**

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 161/2019**Date of Passing Award- 21.08.2022****Between:**

Shri Mukesh Kumar,
S/o Shri Kishori Shah,
R/o-VPO Shahbad Mohamadpur, Near Solanki Computer,
Near Shiv Mandir, New Delhi-110061.
Through- Hindustan Engineering and General Mazdoor Union,
Head Office:- D-2/24, Sultanpuri, Delhi-110086.

... Workman

Versus

1. Delhi International Airport Pvt. Ltd.,
Terminal-3, IGI Airport, New Delhi-110037.
2. Delhi International Airport Pvt. Ltd.,
D-17, Pushpanjali Guest House, Link Road Dwarka, New Delhi-110061.

3. Sodexo Technicals Services India Pvt. Ltd.,
B-21, IInd & IIIrd-Floor, Sector-58, Noida UP.
4. OCS Group UK Facility Management Services,
Omega Chamber-1/3, Rawandsa Road, Gurgaon ... Managements

Appearances:-

Claimant in person (A/R) : For the claimant
 Shri Digvijay Rai, Manish Sehrawat (A/R) : For the Management No.1 and 2
 Shri B K Singh : For the management No.3.

AWARD

The matter was taken up today for conciliation before the bench during National Lok Adalat. The A/R for the claimant is present. On behalf of management no.3 the authorized representative has given a statement that the dispute between the claimant and the management no.3 has been amicably resolved and as a step of settlement the management no.3 has paid Rs. 40959/- vide cheque no. 035040/- dated 12.03.2020 to the claimant which he received towards full and final settlement of his claim including the claim for reinstatement, back wages and other consequential benefits. A joint application duly signed by both the parties has been placed on record. In view of the same the dispute stands settled and the proceeding stands disposed of in the Lok Adalat by way of conciliation. The record be consign as per rules.

21.08.2022

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2022

का.आ. 1029.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दिल्ली इंटरनेशनल एयरपोर्ट प्रा- लिमिटेड; सोडेक्सो टेक्निकलस सर्विसेज इंडिया प्रा- लिमिटेड और ओसीएस ग्रुप यूके फैसिलिटी मैनेजमेंट सर्विसेज के प्रबंधन के संबद्ध नियोजकों और श्री राम भूल सिंह, थू- हिंदुस्तान इंजीनियरिंग एंड जनरल मजदूर यूनियन, दिल्ली बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली पंचाट (संदर्भ संख्या (162/2019) प्रकाशित करती है।

[सं. जेड-16025/04/2022-IR(M)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 20th October, 2022

S.O. 1029.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 162/2019) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Delhi International Airport Pvt. Ltd; Sodexo Technicals Services India Pvt. Ltd. and OCS Group UK Facility Management Services and Shri Ram Bhool Singh, Through- Hindustan Engineering and General Mazdoor Union, Delhi.

[No. Z-16025/04/2022-IR(M)]

ASHISH YADAV, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI**

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour
 Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 162/2019**Date of Passing Award- 21.08.2022****Between:**

Shri Ram Bhool Singh,
 S/o Shri Raghunath Singh,
 R/o-384, Solanki Mohalla Shahbad Mohamadpur, New Delhi-110061.

Through- Hindustan Engineering and General Mazdoor Union,
Head Office:- D-2/24, Sultanpuri, Delhi-110086.

... Workman

Versus

1. Delhi International Airport Pvt. Ltd.,
Terminal-3, IGI Airport, New Delhi-110037.
2. Delhi International Airport Pvt. Ltd.,
D-17, Pushpanjali Guest House, Link Road Dwarka, New Delhi-110061.
3. Sodexo Technicals Services India Pvt. Ltd.,
B-21, IInd & IIInd-Floor, Sector-58, Noida UP.
4. OCS Group UK Facility Management Services,
Omega Chamber-1/3, Rawandsa Road, Gurgaon

... Managements

Appearances:-

Claimant in person (A/R) : For the claimant
Shri Digvijay Rai, Manish Sehrawat (A/R) : For the Management No.1 and 2
Shri B K Singh : For the management No.3.

AWARD

The matter was taken up today for conciliation before the bench during National Lok Adalat. The A/R for the claimant is present. On behalf of management no.3 the authorized representative has given a statement that the dispute between the claimant and the management no.3 has been amicably resolved and as a step of settlement the management no.3 has paid Rs. 35436/- vide cheque no. 035037/- dated 12.03.2020 to the claimant which he received towards full and final settlement of his claim including the claim for reinstatement, back wages and other consequential benefits. A joint application duly signed by both the parties has been placed on record. In view of the same the dispute stands settled and the proceeding stands disposed of in the Lok Adalat by way of conciliation. The record be consign as per rules.

21/08/2022

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2022

का.आ. 1030.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दिल्ली इंटरनेशनल एयरपोर्ट प्रा- लिमिटेड; सोडेक्सो टेक्निकलस सर्विसेज इंडिया प्रा- लिमिटेड और ओसीएस ग्रुप यूके फैसिलिटी मैनेजमेंट सर्विसेज के प्रबंधन के संबंध में नियोजकों और श्री नरेंद्र कुमार, थ्रू- हिंदुस्तान इंजीनियरिंग एंड जनरल मजदूर यूनियन, दिल्ली बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली पंचाट (संदर्भ संख्या 164/2019) को प्रकाशित करती है।

[सं. जेड-16025/04/2022-IR(M)]

आशीष यादव, अवर सचिव

New Delhi, the 20th October, 2022

S.O. 1030.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 164/2019) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Delhi International Airport Pvt. Ltd; Sodexo Technicals Services India Pvt. Ltd. and OCS Group UK Facility Management Services and Shri Narendra Kumar, Through- Hindustan Engineering and General Mazdoor Union, Delhi.

[No. Z-16025/04/2022-IR(M)]

ASHISH YADAV, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI****Present:** Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour

Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 164/2019**Date of Passing Award- 21.08.2022****Between:**

Shri Narender Kumar,
S/o Shri Prem Singh,
R/o-384, Solanki Mohalla Shahbad Mohamadpur, New Delhi-110061.
Through- Hindustan Engineering and General Mazdoor Union,
Head Office:- D-2/24, Sultanpuri, Delhi-110086.

... Workman

Versus

1. Delhi International Airport Pvt. Ltd.,
Terminal-3, IGI Airport, New Delhi-110037.
2. Delhi International Airport Pvt. Ltd.,
D-17, Pushpanjali Guest House, Link Road Dwarka, New Delhi-110061.
3. Sodexo Technicals Services India Pvt. Ltd.,
B-21, IInd & IIInd-Floor, Sector-58, Noida UP.
4. OCS Group UK Facility Management Services,
Omega Chamber-1/3, Rawansa Road, Gurgaon

... Managements

Appearances:-

Claimant in person (A/R) : For the claimant
Shri Digvijay Rai, Manish Sehrawat (A/R) : For the Management No.1 and 2
Shri B K Singh : For the management No.3.

AWARD

The matter was taken up today for conciliation before the bench during National Lok Adalat. The A/R for the claimant is present. On behalf of management no.3 the authorized representative has given a statement that the dispute between the claimant and the management no.3 has been amicably resolved and as a step of settlement the management no.3 has paid Rs. 38200/- vide cheque no. 035038/- dated 12.03.2020 to the claimant which he received towards full and final settlement of his claim including the claim for reinstatement, back wages and other consequential benefits. A joint application duly signed by both the parties has been placed on record. In view of the same the dispute stands settled and the proceeding stands disposed of in the Lok Adalat by way of conciliation. The record be consign as per rules.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 20 अक्टूबर, 2022

का.आ. 1031.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार फेडरल बैंक लिमिटेड के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एर्नाकुलम के पंचाट (संदर्भ संख्या 26/2013) को प्रकाशित करती है।

[सं. एल-12011/05/2013-आई आर (बी-1)]
डी. गुहा, अवर सचिव

New Delhi, the 20th October, 2022

S.O. 1031.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 26/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Ernakulam as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12011/05/2013– IR(B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULAM

Present: Shri. V.Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Monday the 23rd day of May 2022, 2 Jyaistha 1944)

ID No.26/2013

Workman/Union : Smt.Omana M. A.
Secretary
Temporary Messenger Staff Union
Moolekuzhy House
Karimugal P.O.
Ernakulam - 2
By Adv.Unni Nair

Management : The Zonal Manager
M/s.State Bank of India
M. G. Road
Ernakulam – 682011
By Adv.Raynold Fernandez

This case coming up for final hearing on 15.12.2021 and this Industrial Tribunal-cum-Labour Court on 23.05.2022 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-12011/05/2013-IR(B-1) dated 21.05.2013 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

“ Whether the action of the Management of State Bank of India in terminating the services of Smt.Omana M. A. and also in not paying the minimum wages for the period she was engaged as part time sweeper from the State Bank of India, Refinery Branch ? If not, to what relief she is entitled ? ”

3. The Union filed claim statement on behalf of the worker. The worker joined the service of the Management in 2006 in Shanmugam Branch of the Management Bank. Though she was appointed as sweeper, she was asked to attend as Messenger. She was working from 9.30 am to 5 pm every day. Though the worker was working continuously under the Management since 2006, vouchers for payment of wages were obtained in different names. When a vacancy of substaff arose at Kochi Refinery Branch of the Management Bank in 2008, the worker was asked to join the said Branch. In Kochi Refinery Branch also the worker had been attending sorting and stitching of vouchers, attending post office, filing and Messenger work in addition to the cleaning work. In Kochi Refinery Branch also she used to be paid through vouchers in different names but in her hand writing. Though the worker was working for more than 8 hours a day, the daily wages paid was only Rs.30/-. The worker therefore wrote to the Management seeking regularization of her service and also for payment of statutory wages. Since there was no reply, she lodged a complaint with Assistant Labour Commissioner(C). When the Management received a notice from the Conciliation Officer, the Management outsourced the work and started payment of wages through a contractor. The worker worked under the Management upto 31.05.2011. On 01.06.2011, the Manager of Kochi Refinery Branch informed her that her services were terminated. Her termination on 01.06.2011 is illegal. She was not given any notice, notice pay or compensation at the time of termination. Her termination was not consequent to any disciplinary action. The worker had completed 240 days work in all the years from 2006. In the year of termination also she had worked for more than 240 days. The worker is out of employment since her termination. The service of the worker

was terminated when she requested for regularization and for payment of statutory wages. No permission was obtained from the Conciliation Officer before whom the application for regularization was pending.

4. The Management filed written statement denying the above allegations. Though, in the cause title Smt.Omana M. A. is shown as Secretary of the Union, at the end of the claim statement she had signed as worker. The worker was not the employee of the Management. Her claim regarding appointment as Sweeper in Shanmugam Road Branch of the Management in the year 2006 is absolutely false. It is also incorrect to say that she worked as a Messenger. It was also denied that the worker worked from 9.30 am to 5 pm. The worker was engaged only for a few days for one or two hours a day to do her jobs. Her claim of working with Management Bank continuously is also denied by the Management. It is not correct to say that the worker was asked to join at Kochi Refinery Branch of the Bank in the year 2008. Since 1997 the Management has not done any recruitment of substaff. The worker was engaged in irregular days at Kochi Refinery Branch during 2008-2011 as casual labourer for specified work like sweeping, watering plants, cleaning bathrooms, going to Post Office for an hour or two and she was paid labour charges of Rs.30-50/- from petty cash. Her request for regularization was not considered because the claim had no basis. It is incorrect to say that after receiving the notice from the Conciliation Officer, the Management outsourced the work to a contractor. The Bank decided to outsource housekeeping work as per its policy implemented all over India. The Bank had entrusted M/s.Incare Housekeeping Pvt Ltd, Cochin the task of housekeeping for the year 2011-12. The worker was getting her wages from the agency. The worker had no employer-employee relationship with the Management Bank. After expiry of the contract period with M/s.Incare Housekeeping Pvt Ltd, the Bank had outsourced the housekeeping work for the year 2012-13 through another agency by name M/s.House Master, Cochin. The said agency did not engage the worker. Thereafter she approached the Assistant Labour Commissioner(C). In the conciliation proceedings with the Assistant Labour Commissioner(C) the worker was directed not to resort to Dharna or any such action before the Bank premises during pending conciliation proceedings. In utter disregard to the directions, the worker continued the Dharna, and displaying placards and causing obstruction to the entry of customer to the premises of the Bank. The Bank was compelled to file O.S. no.668/2013 before Munsiff's Court, a suit for mandatory injunction. As per order in IA no.3918/2013 the Hon'ble Court restrained the worker from conducting Dharna in front of the Bank premises. After serving the order on her on 06.07.2013, she discontinued her Dharna. The worker was never on the rolls of the Management Bank and therefore there is no question of terminating her service on 01.06.2011 as claimed by her. The worker never worked for more than 240 days in a block of 12 months at any point of time.

5. The Union filed rejoinder rejecting the claims of the Management in the written statement and also affirming its position in the claim petition. It was also pointed out that mentioning of worker at the end of the claim statement is only a mistake. The Union also denied the allegation that she was sitting in Dharna in the Bank premises. A Dharna was organized by the Union in which the worker is a member. The claim regarding the outsourcing of housekeeping work is only to safeguard the interest of the Management Bank.

6. The Union filed IA no.163/2015 seeking to direct production of Petty Cash Vouchers from 01/2008 to 07/2011, copy of ledger under the head 'Petty Cash' for the period 03/2008 to 04/2011, bundled vouchers for the period from 01.01.2009 to 31.01.2009 along with its identification tag and bundled vouchers for the period from 01.01.2010 to 31.01.2010 along with its identification tag. The Management filed a reply stating that the vouchers' copy had already been provided to the worker under RTI Act and the available vouchers are already provided to her. The same can be produced before the Tribunal. Ledger pertaining to petty cash will not contain the names of persons to whom payments are made. These registers will run to several pages. After hearing the parties, this Tribunal closed the application.

7. After completion of pleadings, the worker was examined as WW1 and Exbt.W1 series is marked through her. Management examined MW1 and marked Exbt.M1 through him.

8. The following issues are framed for adjudication

- a. Whether the action of the Management Bank in terminating the services of Smt.Omana M. A. is legal ?
- b. Whether Smt.Omana M. A. was paid minimum wages for the period she was engaged as part time sweeper ?
- c. Relief and cost ?

9. Issue no.1

The learned Counsel for the Management pointed out that the Union which raised the industrial dispute is not in existence and the worker herself had signed as 'worker' in the claim statement filed before this Tribunal. The learned Counsel for the worker pointed out that the Union is very much in existence and the worker was the General Secretary of the Union during the relevant point of time. The worker also in her evidence stated that the Union is

very much in existence and she was the Secretary at the time of filing the claim petition. She also confirmed that she was removed from the General Secretaryship after the dispute is raised.

10. The claim of the worker that she was an employee of the Management is denied by the learned Counsel for the Management. She was only temporarily engaged for short periods for housekeeping and similar works. However this claim of the Management is contradicted by the evidence of MW1 who in his evidence stated that the worker was mainly doing the cleaning work. However she was also sorting and bundling the vouchers, filing of papers, going to Post Office and going to pay the telephone bills and Tax etc., of the Bank. Hence it is clear that the claim of the Management that she was working only for short spells from 1 to 2 hours daily is not correct. Further MW1 has stated in his evidence that the Bank was paying salary of the worker directly from 2006 to 2011. He also stated that the vouchers produced by the worker would substantiate the payments. He was referring to W1 series of vouchers produced by the Union evidencing the payment of wages to the worker from 01.10.2008 to 17.06.2011. The learned Counsel for the Management pointed out that the dispute raised by the worker cannot be termed as an industrial dispute within the meaning of Sec 2(k) of the Industrial Disputes Act, 1947 as the worker was never appointed by the Bank and never terminated her from the service of the Bank. As per the definition of Sec 2(s) of ID Act, the worker shall be employed to do the work in the industry which means that there should be an employer-employee relationship. The learned Counsel for the worker argued that the worker continuously worked for the Management Bank for more than 5 years and they paid her salary. Therefore the Management cannot plead that the present dispute raised by the worker cannot be termed as an industrial dispute. As per Sec 2(s);

“Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

- (i) ...
- (ii) ...
- (iii)...
- (iv)...”

The definition of workman as above falls in 3 parts. The 1st part of the definition gives the statutory meaning of workman. The 2nd part is designed to include persons who has been dismissed, discharged or retrenched in connection with an industrial dispute or whose dismissal, discharge or retrenchment has led to an industrial dispute. The 3rd part connotes that even if a person satisfied the requirements of any of first two parts, if he falls in any of the 4 categories in the 3rd part, he shall be excluded from the definition of workman. In this particular case the claim of the Union is that the worker was engaged on a temporary basis against a permanent post for over 5 years. There is evidence that she was being paid wages throughout her service by the Management Bank.

11. According to the learned Counsel for the worker, the worker worked as Sweeper in the Management Bank from 2006 to May 2011. She requested the Management for regularizing her service and also for payment of minimum wages. In retaliation, the Management terminated the service of the worker w.e.f. 01.06.2011. According to the Counsel, her service was continuous and the services was terminated without following the mandatory requirements U/s 25F of the ID Act. According to the learned Counsel for Management, the Management never engaged the worker for doing any regular work and her service was utilized occasionally to clean the premises for which she was paid on daily wage basis. According to him, the worker never had continuous service as claimed by her. According to learned Counsel for the Union, the worker obtained the details of the voucher payment made to her w.e.f. 01.10.2008-17.06.2011 under RTI Act and those documents were produced as Exbt.W1 series which would clearly establish the fact that the worker worked for more than 240 days one year immediately prior to her termination. As per Sec 25B

- “1. a workman shall be said to be in continuous service for a period if he is for that period, in uninterrupted service including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal or a lockout or cessation of work which is not due to any fault on the part of the workman.
- 2. where a workman is not in continuous service within the meaning of clause 1 for a period of one year or 6 months, he shall be deemed to be in continuous service under the employer for a period of one year, if the workman during a period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than

I.

II. 240 days in any other case”

Hence to get the benefit of continuous service U/s 25B of the Industrial Disputes Act, the worker ought to have worked with the Management for 240 days during the period of 12 calendar months preceding 31.05.2011. According to the Counsel for the worker, the worker collected the copies of vouchers of evidencing payments made to her under RTI Act and the same is produced as Exbt.W1 series which would establish the continuous service of the worker. The worker filed an IA for production of the originals of these vouchers and the Management took a stand the copies produced to the worker under RTI Act can be produced in the proceeding. Further the Management wanted to verify the Exbt.W1 vouchers and the same was allowed by this Tribunal. After verifying Exbt.W1, the learned Counsel for the Management confirmed the genuineness of the documents in Exbt.W1 series. The learned Counsel for the worker relied on the decision of the Hon'ble Supreme Court of India in **Director, Fisheries Terminal Division Vs Bhikubhai Meghajibhai Chayda**, 2010 KHC 6126 to argue that once the worker discharged her responsibility by producing the documents at her command, the burden shifts to the Management to prove that she has not worked for more than 240 days as required U/s 25B of the Act. In the above case the workman was a watchman who was paid daily wages and whose presence were marked in the Muster Roll. According to the Management, the workman worked from 1986 till 1988 and during this period the workman had worked for 93 days, 145 days and 31 days respectively. According to them the workman had not worked for more than 240 days in the preceding years. The Hon'ble Supreme Court relying on the decision in **R. M. Yellatty Vs Assistant Executive Engineer**, 2006 (1) SCC 106 held that

“The respondent was a workman hired on daily wage basis. So it is obvious, as this Court pointed out in the above case that he would have difficulty in having access to all the above documents, Muster Roll etc., in connection with his service. He came forward and deposed, so in our opinion the burden of proof shift to the employer/appellant to prove that he did not complete 240 days of service in the requisite period to constitute continuous service”.

12. In the present case also it is seen that the worker was examined as WW1 and she stated in her evidence that she worked with the Management from 2006 to 2011. However she could produce supporting documents for the year 2008-2011. The learned Counsel for the worker relied on the decision of **Gauri Shankar Vs State of Rajasthan**, 2015 (12) SCC 754. In the above case, the workman was working with the respondent and his case was that he was appointed against a permanent and sanctioned post w.e.f. 01/1990 till his services came to be retrenched and he had rendered service of more than 240 days in every calendar year and has received salary from the respondent department each month. The workman challenged the retrenchment as bad in law as the same is in violation of Sec 25F, 25G, 25H, 25T and 25U of the ID Act. The workman applied for production of the Muster Roll and the management failed to produce the relevant Muster Rolls. The Hon'ble Supreme Court relying on its earlier decisions in **Gopal Krishna G Ketker Vs Muhammed Haji Latheef**, AIR 1968 SC 1413 and **Murukesam Pillai Vs Manikyavasaka Pandara**, 1917 (5) LW 759 held that even if the burden of proof does lie on a party, the Court can draw an adverse inference if he withholds important documents in his possession which can throw light on the facts of issue. The learned Counsel for the worker also relied on the decision of the Hon'ble Supreme Court in **Sriram Industrial Enterprises Ltd Vs Mahak Singh and others**, 2007 (4) SCC 94, wherein the Hon'ble Supreme Court held that when the workman discharged their initial onus by producing the documents in their possession, it is the responsibility of the Management to disprove the claim of the workman that she did not work for more than 240 days with the Management one year immediately prior to his/her termination. In this case there is no dispute regarding the fact that the worker was engaged as a daily wager w.e.f. 2006. There is also no dispute with regard to the fact that her services were orally terminated w.e.f. 01.06.2011. The documents discussed above will substantiate the above points. The worker also produced evidence to show that she was paid wages against voucher. She also entered the box and deposed that she worked with the Management continuously from 2006 to 2011. Hence it can safely be considered that the worker had discharged her responsibility of proving that she worked for more than 240 days in one year prior to her date of termination. In such circumstances as per the law laid down by the Hon'ble Supreme Court on the issue, it is possible to draw an inference that she worked for more than 240 days in view of the fact that the Management failed to produce any documents to disprove her claim that she worked continuously for more than 240 days in one year prior to the date of her termination.

Hence from the facts, evidence and law discussed above, it is concluded that the worker had rendered continuous service of 240 days making her eligible for the benefits U/s 25F of the Industrial Disputes Act.

13. The learned Counsel for the Management argued that the worker in this case is only a casual employee on daily wages and hence she is not entitled to claim the benefits U/s 25F of the ID Act. The learned Counsel for the worker relied on the decision of Hon'ble High Court of Kerala in **Sreekumar K. Vs Managing Director, KTDC Ltd**, 2019 (1) KHC 225 to point out that the definition in Sec 2(s) of the ID Act includes casual employees also. In the above case, the Hon'ble High Court held that;

“ Para 18. From this it is quite evident that the definition of the term ‘workman’ U/s 2(s) of the ID Act includes a casual employee as well and hence the decision cited (Supra) (in the context governed by the provisions of the workman’s Compensation Act) is not at all attracted to the case in hand”.

In a recent judgment dt.27.10.2021 in the case of **K.V. Anil Mithra and another Vs Sree Sankaracharya University of Sanskrit and another**, Civil Appeal no.9068/2014 the Hon'ble Supreme Court held that

“ Para 24. The salient fact which has to be considered is whether the employee who has been retrenched is a workman U/s 2(s) and is employed in an industry defined U/s 2(j) and who has been in continuous service for more than one year can be retrenched provided the employer complies with the twin conditions provided under Clauses (a) and (b) of Sec 25(F) of the Act, 1947 before the retrenchment is given effect to. **The nature of employment and the manner in which the workman has been employed is not significant for consideration while invoking the mandatory compliance U/s 25(F) of the Act, 1947”** .

Hence it is clear that the nature of employment is not the criteria while deciding the applicability of Sec 25(F) of Industrial Disputes Act. The Management has no case that they followed the procedure U/s 25(F) of the Industrial Disputes Act while terminating the service of the worker.

14. Considering all the facts discussed above, pleadings and evidence in this case, I am inclined to hold that the termination of worker from the service of the Management Bank is abinitio void and is in violation of Sec 25(F) of Industrial Disputes Act, 1947.

15. Issue no.2

There is no dispute regarding the fact that the worker was being paid 30-50 rupees per day by the Management for the services rendered by her during the relevant period. The Union failed to produce any documents regarding the minimum wages notified during the relevant point of time. Hence it is not clear as to whether the worker was paid minimum wages or not. It is clear that the payments restricted to Rs.30-50 per day would clearly established the fact that the wages paid to the worker was very low compared to the work that she was doing in the Management Bank. MW1 in his evidence already stated that the worker was doing all the work of a Sweeper as well as that of a Messenger. He further stated that the worker was being directly paid by the Management Bank and the Bank was not paying minimum wages to her.

Hence it is clear from the available evidence that the worker was not being paid the minimum wages.

16. Issue no.3

According to the learned Counsel for the Management, the worker was only a casual employee and was paid only for the days when she worked for the Management. It was also pointed out that she was not working against any permanent or perennial post in the Management. According to the learned Counsel for the worker, once this Tribunal found that the termination of the worker was illegal, she is entitled for reinstatement in service with full back wages. The learned Counsel for the Management pointed out that being a casual employee, the worker is not entitled for regularization considering the spirit of the decision of the Hon'ble Supreme Court in **State of Karnataka Vs Uma Devi** (Supra). The Hon'ble Supreme Court of India in **State of Uttarakhand and others Vs Rajkumar**, 2019 (1) LLJ 513 SC relying on its earlier decisions of **BSNL Vs Bhurumal**, 2014 (7) SCC 177 and **District Development Officer and another Vs Satish Kantilal Amerelia**, 2018 (12) SCC 298 held that in the circumstances of that case it would be just and proper and reasonable to award lumpsum monetary compensation to the workman in full and final satisfaction of his claim for reinstatement and other consequential benefits. The Hon'ble Supreme Court has laid down the law on the subject in **BSNL** case (Supra) as follows

“ Para 33. It is clear from the readings of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workmen are terminated illegally and/or malafide and/or by way of victimization, of unfair labour practice, etc. However when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Sec 25F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

Para 34. The reasons for denying the relief for reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non payment of retrenchment compensation and notice pay as mandatorily required U/s 25F of the ID Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated he has no right to seek regularization [see **State of Karnataka Vs Uma Devi**(3)]. Thus when he cannot

claim regularisation and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself in as much as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

Para 35. We would however, like to add a caveat here. There may be cases where termination of daily wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principles of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases reinstatement should be the rule and only in exceptional cases, for the reasons stated to be in writing, such relief can be denied.”

The learned Counsel for the worker on the other hand relied on the decisions of the Hon'ble Supreme Court in **Jasmar Singh Vs State of Haryana and other**, 2015 4 SCC 458 and argued that the worker is entitled for reinstatement with full back wages since the order of termination was void abinitio. The Hon'ble Supreme Court in the above case relied on the following observation of the Court in **Deepali Gundu Surwase Vs Kranti Junior Adyapak Mahavidyalaya**, 2013 10 SCC 324 to hold that when the termination is found to be illegal, the workman is entitled for reinstatement with back wages.

“ Para 22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from relatives and other acquaintance to avoid starvation. These sufferings continued till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultravires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer was to deny back wages to the employee, or contesting his entitlement to get consequential benefits then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments”.

In the above case, the Hon'ble Supreme Court was considering the case of a workman working as a daily paid worker in the office of Sub Divisional Officer (Karnal) for more than 240 days.

17. In the present case, it is seen that the worker was engaged as a daily wage employee and she worked continuously for more than 240 days one year prior to her termination. The Management has no case that the worker was gainfully engaged during the termination, though the worker stated during the evidence that she was doing some work for her subsistence. Hence this is a fit case where the dictum laid down by the Hon'ble Supreme Court in **State of Uttarakhand Vs Raj Kumar** (Supra) can be applied. It is seen that the worker was engaged on a daily wage basis on a daily wage of Rs.30-50 which is far below the minimum wages. At present the worker is already 45 year of age. Hence it would be just and proper and reasonable to award a lumpsum monetary compensation to the worker in full and final satisfaction of her claim of reinstatement and other consequential benefits. Taking into account all the circumstances and the meager wages paid to her which is far below the minimum wages, it is felt that interest of justice will be met if the Management is directed to pay a lumpsum monetary compensation of Rs.3,50,000/- to the worker in full and final settlement within one month from the date of notification of this award.

18. In view of the above, an award is passed holding that the termination of the worker and not paying minimum wages for the period she was engaged as part time sweeper in the Management Bank is illegal. She is entitled to a lumpsum monetary compensation of Rs.3,50,000/- in lieu of full and final statement of all her claims.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 23rd day of May, 2022.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX**Witness for the Workman:-**

WW1 - Smt.Omana M. A., dt.19.07.2019

Witness for the Management:-

MW1 - Sri.Tuni K. V., dt.23.09.2021

Exhibits for the Workman:-

W1 - Petty Cash vouchers for the period from 01.10.2008-
series 17.06.2011 - 592 no's 406 pages

Exhibits for the Management:-

M1 - Copy of judgment in O.S. no.668/2013 by II Addl. Munsiff
Court, Ernakulam dt.20.06.2014